FILED
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No. 99-2036

IN THE
SUPREME COURT OF THE UNITED STATES

THE GOOD NEWS CLUB, ANDREA FOURNIER, AND DARLEEN FOURNIER,
Petitioners,

v.

MILFORD CENTRAL SCHOOL,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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Joint Appendix

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Petition for Writ of Certiorari Filed June 16, 2000
Certiorari Granted October 10, 2000

December 1, 2000

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3. *Good News Club, et al. v. Milford Central School*, United States Court of the Appeals for the Second Circuit, Order Denying Petition for Panel Rehearing and Petition for Rehearing *en banc*, dated March 21, 2000 ..... Pet. Appx., B1[2]

4. *Good News Club, et al. v. Milford Central*

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1 Typographical errors in the original documents have not been corrected.

2 Documents reproduced as appendices to the Petition for Writ of Certiorari are not reproduced herein pursuant to Rule 26.1. The respective location of these documents in the Appendix to the Petition is noted for the convenience of the Court and counsel.

School, Decision of the Second Circuit Court of Appeals dated February 3, 2000, 202 F.3d 502 (2nd Cir. 2000) . . Pet. Appx., A1

5. *Good News Club, et al. v. Milford Central School*, No. 97-cv-0302, Memorandum Decision and Order of the United States District Court for the Northern District of New York, dated October 23, 1998 . . . . . Pet. Appx., C1

6. Complaint filed March 7, 1997 . . . . . C1-C6

7. Answer to Complaint filed April 4, 1997 . . . . . D1-D6

8. Notice of Motion, by Defendant (Respondent), for an Order Granting Summary Judgment, Dated July 31, 1998 . . . . . E1-E3

9. Defendant's (Respondent's) Rule 7(f) Statement of Undisputed Facts in *Good News Club, et al. v. Milford Central School*, No. 97-cv-0302 (U.S. Dist. Ct. N. Dist. N.Y.), dated July 2, 1998 . . . . . Pet. Appx., F1

10. Affidavit of Frank W. Miller, Sworn to July 2, 1998, for Defendant, in Support of Motion for Summary Judgment F1-F14

11. Exhibit 2 to Defendant's Motion for Summary Judgment - Affidavit of Dr. Robert C. McGruder, Sworn to March 27, 1997, in Opposition to Motion for Preliminary Injunction G1-G7

12. Exhibit A to McGruder Affidavit (Exhibit 2 to Defendant's Motion for Summary Judgment) - Letter from Robert McGruder to Rev. S.D. Fournier, Dated October 3, 1996 . . H1-H2

13. Exhibit B to McGruder Affidavit (Exhibit 2 to Defendant's Motion for Summary Judgment) - Letter from Thomas Marcelle to Robert McGruder, Dated January 7, 1997 . I1-I2

14. Exhibit D to McGruder Affidavit (Exhibit 2 to Defendant's Motion for Summary Judgment) - Letter from Thomas Marcelle to Norman H. Gross, Dated January 17, 1997 . . . J1-J2

15. Notice of Cross-Motion, by Plaintiffs (Petitioners Good News Club, *et al.*), for an Order Granting Summary Judgment, Dated July 29, 1998 . . K1-K2

16. Plaintiffs' (Petitioners Good News Club, *et al.*) Rule 7(f) Statement of

Undisputed Facts), dated July 29, 1998 . . . . . Pet. Appx., E1

17. Plaintiff's (Petitioners') Response to Defendant's (Respondent's) Rule 7(f) Statement, dated July 29, 1998 . . . . . Pet. Appx., G1

18. Affidavit of Steve Fournier, dated July 28, 1998, in Opposition to Defendant's (Respondent's) Motion for Summary Judgment and in Support of Plaintiffs' (Petitioners') Cross-Motion for Summary Judgment, ... Pet. Appx., H1

19. Affidavit of Darleen Fournier, Sworn to April 4, 1997, in Opposition to Defendant's (Respondent's) Motion for Summary Judgment and in Support of Plaintiffs' (Petitioners') Cross-Motion for Summary Judgment, ... L1-L2

20. Affirmation of Thomas Marcelle, Dated July 27, 1998, for Plaintiffs, in Opposition to Defendant's (Respondent's) Motion for Summary Judgment and in Support of Plaintiffs' (Petitioners') Cross-Motion for Summary Judgment M1-M6

21. Plaintiffs' (Petitioners') Exhibit 1, Milford Central School's Community Use of Facilities Policy (Defendant's (Respondent's) Exhibit 3) . . . . . Pet. Appx., D1

22. Plaintiffs' (Petitioners') Exhibit 10, Deposition Testimony of Peter Livshin, Dated January 28, 1998 (Defendant's (Respondent's) Exhibit 10) (signing stipulation, attestation and exhibits omitted) N1-N20

23. Plaintiffs' (Petitioners') Exhibit 11, Decision of Honorable Thomas J. McAvoy, Dated April 17, 1997, Granting Plaintiff's Motion for a Preliminary Injunction (Defendant's (Respondent's) Exhibit 7)(reporter's certification omitted) O1-O11

24. Plaintiffs' (Petitioners') Exhibit 12, Deposition Testimony of Stephen Fournier and Darleen Fournier, Dated January 28, 1998 (Defendant's (Respondent's) Exhibit 9)(signing stipulation, index and reporter's certification omitted) P1-P114

25. Reply Affidavit of Frank W. Miller, Sworn to July 31, 1998, in

Opposition to Plaintiffs' (Petitioners')
Cross-Motion and in Further Support
of Defendant's (Respondent's) Motion
. . . . . Q1-Q10

GENERAL DOCKET FOR
Second Circuit Court of Appeals

Court of Appeals Docket #: 98-9494
Nsuit: 3440 CIVIL RIGHTS-Other
Good News Club, et al v. Milford Central Scho
Appeal From: U.S. District Court NDNY

- -

Lower court information:
District: 0206-03: 97-cv-302
Trial Judge: Thomas J. McAvoy, Chief Judge
Magistrate Judge: Gary L. Sharpe
Date Filed: 03/07/97
Date order/judgment: 10/23/98
Date NOA filed: 10/30/98

- -

Fee status: Paid

- -

Prior cases:
None
Current cases:
None

- -

Panel Assignment:
Panel: RJM DJ FIP 1705 :CA2 6/23/99
am
Date of decision: 2/3/00

11/9/98 Copy of notice of appeal and district court docket entries on behalf of Appellant Good News Club, Appellant

Andrea Fournier, Appellant Darleen Fournier filed.

11/9/98 Per the district court docket sheet copy of receipt re: payment of docketing fee filed on behalf of Appellant Good News Club, Appellant Andrea Fournier, Appellant Darleen Fournier receipt #: 38480.

11/25/98 Appellants Good News Club, Andrea Fournier, and Darleen Fournier motion to extend time to File Appellant's Brief FILED (w/pfs).

12/1/98 Order FILED GRANTING motion for extended time by Appellant Good News Club, Andrea Fournier, Darleen Fournier, endorsed on motion form dated 11/25/98. Extended appellant's brief due date is 1/21/99. Extended appellee's brief due date is 2/22/99. Extended argument week as early as 4/5/99.

12/3/98 Record on appeal index in lieu of record filed.

1/21/99 Appellant's Good News Club, Andrea Fournier, and Darleen Fournier brief FILED with proof of service. (cv79)

1/21/99 Appellant's Good News Club, Andrea Fournier, and Darleen Fournier joint appendix filed w/pfs.

2/11/99 Letter endorsed by Thomas J. Marcelle, Esq., and Frank W. Miller, Esq., indicating that they consent to the filing of an amicus curiae brief by the New York State School Boards Association, Inc., filed.

2/11/99 New party added: New York State School Boards Association.

2/22/99 Appellee Milford Central School brief filed with proof of service.

2/22/99 Amicus Curiae New York State School brief filed with proof of service.

3/8/99 Appellants Good News Club, Andrea Fournier, and Darleen Fournier reply brief filed with proof of service.

5/11/99 Set for argument on 6/23/99.

6/23/99 Case heard before MINER, JACOBS, PARKER C.JJ. (TAPE: #307+308)

2/3/00 Judgment of the district court is AFFIRMED by published signed

opinion filed.

2/3/00 Judge (DJ) DISSENTING in a separate opinion filed.

2/3/00 Judgment filed. [Entry Date: 2/3/00]

2/17/00 Appellant Good News Club, Appellant Andrea Fournier, Appellant Darleen Fournier Petition for rehearing, petition for rehearing en banc with proof of service filed.

3/21/00 Order FILED DENYING petition for REHEARING by Appellant Good News Club, Andrea Fournier, Darleen Fournier, endorsed on motion dated 2/17/00. DENYING petition for rehearing in banc by Appellant Good News Club, Andrea Fournier, Darleen Fournier, endorsed on motion dated 2/17/00. (In Banc panel for the court BJM)

3/28/00 Judgment MANDATE ISSUED.

6/23/00 Notice of filing petition for writ of certiorari for Appellant Good News Club, Appellant Andrea Fournier, Appellant Darleen Fournier dated June 21, 2000 filed. Supreme Ct#:

99-2036.

10/16/00 Letter dated 10/10/00 from the Supreme Court advising of order GRANTING petition for writ of certiorari by Appellant Good News Club, Andrea Fournier, Darleen Fournier, endorsed on motion form date 6/23/00 filed. (Supreme Court # 99-2036)

3:97cv302
The Good News Club, et al v. Milford Central

U.S. District Court
Northern District of New York (Binghamton)
CIVIL DOCKET FOR CASE #: 97-CV-302

The Good News Club, et al v. Milford Central
Filed: 03/07/97
Assigned to: Chief Judge Thomas J. McAvoy
Referred to: Magistrate Judge Gary L. Sharpe

Cause: 42:1983 Civil Rights Act

3/7/97	COMPLAINT filed
3/7/97	SUMMONS(ES) issued for Milford Central
3/13/97	MOTION for Show Cause Hearing by The Good News Club, Andrea Fournier, Darleen Fournier Show Cause Hearing for Motion returnable before Judge/Mag. Judge: Thomas J. McAvoy
3/13/97	MEMORANDUM by The Good News Club, Andrea Fournier, Darleen Fournier in support of motion

3/14/97	Pltfs MEMORANDUM in support of Order to Show Cause
3/14/97	ORDER 3/13/97 denying motion Show Cause Hearing signed by Chief Judge Thomas J. McAvoy
3/14/97	LETTER to Judge McAvoy from Thomas Marcelle, Esq. dated 3/14/97 RE: Plaintiffs withdraw their request for an order to show cause that was filed on 3/10/97: Plaintiffs will bring their motion for injunctive relief by regular notice of motion returnable on 4/14/97 in Albany.
3/14/97	MOTION by The Good News Club, Andrea Fournier, Darleen Fournier for Preliminary Injunction, Hearing set for 10:00 4/14/97, Response Deadline 3/31/97, Reply to Response Deadline 4/7/97 Motion returnable before Judge/Mag. Judge: McAvoy
3/14/97	AFFIDAVIT by Thomas Marcelle, Esq. for The Good News Club, Andrea Fournier, Darleen Fournier Re: In support of motion for Preliminary Injunction
3/14/97	MEMORANDUM OF LAW by The Good

	News Club, Andrea Fournier, Darleen Fournier in support of motion for Preliminary Injunction
4/3/97	DEFT'S AFFIDAVIT in opposition to Pltfs' motion for Preliminary Injunction
4/3/97	DEFT'S AFFIDAVIT IN OPPOSITION to Pltfs' motion for Preliminary Injunction
4/3/97	DEFT'S MEMORANDUM in opposition to Pltfs' motion for Preliminary Injunction
4/4/97	ANSWER to Complaint by Milford Central (Attorney Thomas H. Kutzer)
4/4/97	ORDER extending Deft's time to file a Response to Motion reset to 4/2/97 for motion for Preliminary Injunction (signed by Chief Judge Thomas J. McAvoy on 4/4/97)
4/7/97	REPLY Memorandum by The Good News Club, Andrea Fournier, Darleen Fournier to Defts response in opposition to Pltfs motion for Preliminary Injunction

4/15/97	MINUTES OF 4/14/97 MOTION HEARING: Pltf motion for preliminary injunction -- GRANTED; Bond set at $25,000; APP: Thomas J. Marcelle, Esq., for Pltf; Norman Gross, Esq., for Deft
4/18/97	TRANSCRIPT OF PROCEEDINGS (Motion Decision) filed for dates of 4/14/97 before the Hon. Thomas J. McAvoy, Chief U.S. District Court Judge.
4/29/97	AFFIDAVIT by Thomas Marcelle, Esq. on behalf of The Good News Club, Andrea Fournier, Darleen Fournier w/undertaking by plaintiffs for $25,000 Re: motion for Preliminary injunction
4/29/97	ORDER granting motion for Preliminary Injunction, allowing plaintiffs to use Milford Central School cafeteria to conduct its meetings and ordering that obligation to post undertaking in the amount of $25,000 has been fulfilled by plaintiffs. (signed by Chief Judge Thomas J. McAvoy)
5/7/97	AFFIDAVIT of Service by The Good News Club, Andrea Fournier, Darleen

Fournier Re: complaint

5/9/97 MOTION by The Good News Club, Andrea Fournier, Darleen Fournier for Reconsideration of order , Hearing set for 10:00 6/9/97 Motion returnable before Judge/Mag. Judge: Thomas J. McAvoy

5/9/97 MEMORANDUM by The Good News Club, Andrea Fournier, Darleen Fournier in support of order

5/15/97 Minute entry: MOTION CALENDAR HELD 5/12/97 Court Reporter/ECRO: H. Santspree; Appear: None; Pltf's motion for preliminary injunction MOOT; addressed by Chief Judge McAvoy

6/9/97 Motion hearing re: pltf's motion for Reconsideration of order held before Chief Judge McAvoy

6/24/97 Minute entry: 6/19/97 Rule 16 Conf. w/MJ Hurd. Parties awaiting decision from 2nd Circuit in a similar action that may effect this action. CM0 to be issued. App. Thomas Marcelle for pltfs, David Larrison & Norman Gross for deft

8/11/97 Motion hearing re: pltf's motion for Reconsideration of order held

8/12/97 Minute entry: MOTION CALENDAR HELD 8/11/97 BEFORE CHIEF JUDGE MCAVOY IN ALBANY: App: None; CR: T. Berical; LC/AW. Pltf's motion for Reconsideration of order - TAKEN ON SUBMIT.

9/9/97 ORDER 9/3/97 granting Pltf's motion for a preliminary injunction, modifying by striking the last two paragraphs of order requiring pltfs post a bond in the amount of $25,000 (signed by Chief Judge Thomas J. McAvoy)

11/19/97 ORDER, case is reassigned from M/J Hurd to M/J Sharpe (signed on 11/19/97 by Chief Judge Thomas J. McAvoy)

3/30/98 Minute entry of 3/30/98 Pretrial Conference held before Mag/Judge Sharpe, in Binghamton; App: T. Marcelle, Esq., for Pltf; F. Miller, Esq., for Deft; Parties discuss impact of Bronx case upon this action; Deadlines extended; Order to be issued

8/3/98 MOTION by Frank W. Miller, Esq. for Milford Central to Dismiss the Complaint. Hearing set for 10:00 a.m. on 9/14/98, at Albany, NY. Response Deadline 8/31/98. Reply to Response Deadline 9/7/98. Motion returnable before Judge McAvoy

8/3/98 AFFIDAVIT of Frank W. Miller, Esq. in Support Re: motion to Dismiss the Complaint. Exhibits 1-10 are attached in further support.

8/3/98 Rule 7.1(f) Statement by Defendant in Support of motion to Dismiss the Complaint filed by The Good News Club

8/3/98 MEMORANDUM with Proposed Order by Frank W. Miller, Esq. for Milford Central in support of motion to Dismiss the Complaint

8/3/98 CROSS MOTION by Thomas Marcelle, Esq. for The Good News Club, Andrea Fournier, and Darleen Fournier for Summary Judgment, for leave to use its facilities to conduct meetings, for costs, disbursements and Attorney Fees. Attached are the following documents: Plaintiffs' Rule 7(f)

Statement; Response to defendant's Rule (f) Statement; Affidavit of Steve Fournier; Affidavit of Darleen Fournier; Affidavit of Paula Kiser; Affirmation of Thomas Marcelle, Esq.; and Exhibits 1-11. Hearing set for 10:00 a.m. on 9/14/98, at Albany, NY.

8/3/98 VOLUME 2: Exhibit 12 in Support of Cross Motion by Pltfs for summary judgment.

8/3/98 MEMORANDUM by Thomas Marcelle, Esq. for The Good News Club, Andrea Fournier, Darleen Fournier in support of cross motion for Summary Judgment, cross motion for leave to use its facilities to conduct meetings, cross motion for costs, disbursements and Attorney Fees

8/3/98 MEMORANDUM by Thomas Marcelle, Esq. for The Good News Club, Andrea Fournier, Darleen Fournier in opposition to motion to Dismiss the Complaint

8/3/98 RESPONSE by Frank Miller, Esq. for Milford Central in opposition to cross motion for Summary Judgment, cross motion for leave to use its facilities to

conduct meetings, cross motion for costs, disbursements and Attorney Fees

8/3/98 REPLY AFFIDAVIT by Frank Miller, Esq. for Milford Central to response to motion to Dismiss the Complaint

8/3/98 MEMORANDUM by Frank Miller, Esq. for Milford Central in opposition to cross motion for Summary Judgment, cross motion for leave to use its facilities to conduct meetings, cross motion for costs, disbursements and Attorney Fees. Defendant's REPLY MEMO OF LAW in further Support of summary judgment.

9/14/98 Motion hearing held re: cross motion for Summary Judgment, leave to use its facilities to conduct meetings, and for costs, disbursements and Attorney Fees; and motion to Dismiss the Complaint

9/15/98 Minute entry of 9/14/98 Motion Calendar before Chief Judge McAvoy; App: None; LC: A. Reiss; Court Reporter: B. Buckley; Pltfs' cross motion for Summary Judgment, Leave to use its facilities to conduct

meetings, and for costs, disbursements and Attorney Fees and Deft's motion to Dismiss the Complaint - TAKEN ON SUBMIT

10/6/98 STIPULATION by parties that the case can be removed from the trial calendar based-on the pending motions for summary judgment

10/23/98 ORDER denying Pltf's cross motion for Summary Judgment, granting Deft's motion to Dismiss the Complaint and Vacating order granting Preliminary Injunction (signed by Chief Judge Thomas J. McAvoy on 10/23/98)

10/23/98 JUDGMENT for Milford Central against The Good News Club, Andrea Fournier, Darleen Fournier Date Served: 10/23/98

10/30/98 NOTICE OF APPEAL by Thomas Marcelle, Esq., for The Good News Club, Andrea Fournier, Darleen Fournier. Appealing from the Order by Judge McAvoy granting defendant's motion for summary judgment and denying plaintiff's cross motion for summary judgment entered on 10/23/98. FILING FEE $ 105.00

RECEIPT # 38480 index to the record on appeal due on 11/29/98

11/6/98 Notice of appeal and certified copy of docket to USCA re: appeal by Darleen Fournier, Andrea Fournier, The Good News Club (parties noticed)

THE UNITED STATES DISTRICT COURT
FOR
THE NORTHERN DISTRICT OF NEW YORK

THE GOOD NEWS CLUB, ANDREA FOURNIER & DARLEEN FOURNIER

V. Civil Action No.
Complaint

MILFORD CENTRAL SCHOOL

FOR A COMPLAINT, THE PLAINTIFF ALLEGES:

JURISDICTION

1. The Good News Club, Andrea Fournier, and Darlene Fournier bring a civil rights action for injunctive relief pursuant to 42 USC §1983 and 42 USC §2000BB.

2. Plaintiffs invoke the jurisdiction of the Court pursuant to 28 USC § 1331.

PARTIES

3. The Good News Club (hereinafter "GNC") is an unincorporated association with its principal place of business located in the County of Otsego, the State of New York.

4. Andrea Fournier is a member of the GNC and resides in the County of Otsego, the State of New York.

5. Darleen Fournier is the mother of Andrea Fournier and is in charge of the organization of the GNC; Ms. Fournier resides in the County of Otsego, the State of New York.

6. The Defendant, Milford Central School (herein after "Milford"), has its principal place of business located in the County of Oneonta, the State of New York.

BACKGROUND

7. GNC is a youth organization that promotes and teaches children Christian values.

8. GNC is non exclusive and is open to any child between the ages 5 and 12.

9. GNC is not affiliated with any church and does not teach any particular Christian sect's doctrine or theology.

10. At GNC meetings, the children hear a Bible story (in a style that has application to their young lives), play games, learn scripture, and sing songs.

11. On or about September 22, 1996, GNC

submitted a request to use the Milford School cafeteria every Tuesday during the School year between the hours of 3:00 PM to 4:00 p.m.

12. The request was submitted by Ms. Darleen Fournier as the representative in charge of the organization.

13. On or about September 22, 1996, Dr. Robert McGruder, superintendent of Milford Central School, called Ms. Fournier and informed her that GNC would not be permitted to use school facilities because it was school policy that "religious groups could not use the school building."

14. In a letter dated October 3, 1996, Dr. McGruder formally deny GNC's request to use school facilities because GNC's acivities were "the equivalent of [sic] religious worship, which is prohibited under [Milfcrd School] policy."

15. Milford allows the Girls Scouts to use school facilities.

16. Milford allows the Boys Scouts to use school facilities.

17. Milford allows Ostego County 4-H to use school facilities.

18. Milford allows a local little league to use school

facilities.

19. Upon information and belief, in its entire history, Milford has never refused the use of school facilities to any youth organization except plaintiff.

First Cause of Action -- Violation of the Freedom of Speech

20. Plaintiff repeats and realleges ¶l- ¶19 as if fully set forth herein.

21. By denying use of school facilities to GNC because of the content and nature of its speech, defendant violated plaintiff's Constitutional right to Freedom of Speech.

Second Cause of Action -- Violation of RFRA

22. Plaintiff repeats and realleges ¶l- ¶19 as if fully set forth herein.

23. By denying use of school facilities to GNC because of the content and nature of its speech and the religious value which it promotes, defendant has discriminated against plaintiff and has violated plaintiff's rights under the Religious Freedom Restoration Act.

Third Cause of Action -- Violation of the Equal Protection Clause

24. Plaintiff repeats and realleges ¶l- ¶19 as if fully set forth herein.

25. By denying use of school facilities to GNC because of the content and nature of its speech and its religious identity, defendant has discriminated against plaintiff and has violated plaintiffs rights under the Equal Protection clause.

WHEREFORE, the Good News Club asks this honorable court to issue an injunction ordering Milford Central School to permit GNC to use its facilities to conduct its meetings, to cease and desist from further violating GNC's the constitutional rights and rights under the Religious Freedom Restoration Act, and to paid GNC's attorney's fees together with the cost of this litigation; GNC also requests further and different relief that the court deems just, proper, and necessary to remedy the harm that it has suffered.

Darleen Fournier, being duly sworn, sates she has read the foregoing complaint and the same is true to her own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters she believes them to be true.

/s/
Darleen Fournier

Submitted this 6th day of March, 1997.

/s/
Thomas Marcelle
Attorney for Plaintiffs
71 Devonshire Dr.
Slingerlands, NY 12169
Phone: (518) 475-0806

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE GOOD NEWS CLUB, ANDREA FOURNIER & DARLEEN FOURNIER,

Plaintiffs,

ANSWER

vs.

Civil Action No.
97-CV-0302
TJM/DNH

MILFORD CENTRAL SCHOOL,

Defendant.

Defendant, Milford Central School District, named herein as Milford Central School, by their attorneys, Ferrara, Fiorenza, Larrison, Barrett &; Reitz, P.C., as and for an Answer to Plaintiffs' Complaint:

1. ADMITS the allegations contained in Paragraphs "1", "2", "11", "15" and "17" in the Complaint.

2. LACKS SUFFICIENT INFORMATION TO FORM A BELIEF as to the allegations contained in Paragraphs "3", "4", "5", "7", "8", "9", "10", "12", and "19" of the Complaint, and thus DENIES them.

3. DENIES the allegations contained in Paragraphs "21", "23" and "25" of the Complaint.

4. DENIES so much of Paragraph "6" that alleges Defendant, Milford Central School District (named here as "Milford Central School") is located in a County named Oneonta, and AFFIRMATIVELY STATES that it is located in Otsego County.

5. ADMITS so much of Paragraph "13" that alleges on or about September 22, 1996, Dr. McGruder had a telephone conversation with Ms. Fournier, and DENIES the remainder of that Paragraph.

6. ADMITS so much of Paragraph "14" that alleges on or about October 3, 1996, Dr. McGruder forwarded a letter to Rev. S.D. Fournier, and AFFIRMATIVELY STATES the substance of the letter speaks for itself.

7. ADMITS so much of Paragraph "16" that alleges Defendant allows the Boy Scouts to use a part of a school facility for its organizational meeting with leaders' workshop, AFFIRMATIVELY STATES that in November 1996 and, January 1997, the Cub Scouts were allowed to use the District's facilities, and DENIES the remainder of that Paragraph.

8. ADMITS so much of Paragraph "18" that

alleges Defendant allows the local little league program to use a part of its facility for its registration night, and DENIES the implication that the use is other than this annual registration.

9. REPEATS AND REALLEGES the responses previously stated to the allegations in Paragraphs "20", "22" and "24" of the Complaint.

10. DENIES each and every other allegation not herein specifically admitted, controverted or denied.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:

11. The Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:

12. The pleading is insufficient and is not in the form prescribed, and, therefore, does not state a cause of action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:

13. The Complaint fails to state specific acts of conduct attributable to the Defendant which give

rise to liability pursuant to 42 U.S.C. §1983.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:

14. Plaintiff has failed to allege a custom or policy pursuant to 42 U.S.C. §1983.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:

15. Defendant's concerns with regard to the Establishment Clause of the U.S. Constitution is in furtherance of a compelling governmental interest pursuant to the Religious Freedom Restoration Act (42 U.S.C. §2000bb-1).

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:

16. The allegations in the Plaintiffs' Complaint do not rise to a level of constitutional magnitude: The Court, thus, lacks subject matter jurisdiction.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:

17. The Defendant has created a limited public forum with reasonable regulations on use, related to legitimate governmental concerns, regarding children of impressionable age and violations of the

Establishment Clause of the U.S. Constitution.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:

18. The allowance of use of the school building to the Plaintiffs by the Defendant would violate the Establishment Clause of the United States Constitution.

WHEREFORE, the Defendant, Milford Central School, demands judgment dismissing Complaint, together with reasonable counsel fees and costs incurred in this action, and for such relief as is just and proper.

Dated: April 3, 1997

FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C.
Thomas H. Kutzer, Esq., of Counsel
Bar Roll Number 103404
Attorneys for Defendant
Office & P.O. Address
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TO: THOMAS MARCELLE, ESQ.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE GOOD NEWS CLUB,
ANDREA FOURNIER
& DARLEEN FOURNIER

Plaintiffs,

v.

MILFORD CENTRAL SCHOOL.
Defendants.

NOTICE OF MOTION

Civil Action No.:
97-CV-0307
(TJM/GLS)

MOTION BY: FERRARA, FIORENZA.
LARRISON, BARRETT & REITZ.
P.C.
Frank W. Miller. Esq.. of Counsel
Attorneys for Milford Central
School District

MOTION
RETURNABLE: September 14, 1998
United States District court
Northern District of New York
James T. Foley U.S. Courthouse
Room 222
445 Broadway
Albany, New York

10:00 a.m., or as soon thereafter as counsel may be heard.

OBJECT OF MOTION: Motion for Summary Judgment Pursuant to F.R.C.P. Rule 56

RELIEF DEMANDED: Summary Judgment, Dismissing the Plaintiffs' Complaint pursuant to F.R.C.P. Rule 56

PAPERS IN SUPPORT OF MOTION: Affidavit of Frank W. Miller, Esq. sworn to July 2. 1998, together with all attached Exhibits; Defendant's Statement of Material Facts Over Which There is No Genuine Dispute; Pursuant to Rule 7(f) Defendant's Memorandum of Law in Support of Motion

GROUNDS FOR RELIEF DEMANDED: There are no issues of fact to require a trial.

Dated: July 31, 1998
East Syracuse, New York

FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C.
By: /s/
Frank W. Miller, Esq., of Counsel
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE GOOD NEWS CLUB, ANDREA FOURNIER & DARLEEN FOURNIER

Plaintiffs,

v.

MILFORD CENTRAL SCHOOL,

Defendants.

AFFIDAVIT

Civil Action No.: 97-CV-0302 (TJM/GLS)

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

I, Frank W. Miller, being duly sworn depose and say:

1. I am an attorney at law admitted to practice law in the State of New York, am duly admitted to practice law in the Northern District of New York and my bar roll number is 102203.

2. I am a partner in the firm of Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C., attorneys for Defendant Milford Central School District (the

"Defendant") in the above-referenced matter. I am familiar with the facts and circumstances stated herein. I have handled this matter since joining the firm of Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C. in October, 1997.

3. I make this Affidavit in support of a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, dismissing the Plaintiffs' action in its entirety upon the grounds that there are no triable issues of fact to warrant trial in this action and that Plaintiffs' claims lack merit.

4. On or about September 22, 1996, Dr. Robert C. McGruder, Interim Superintendent of Schools of the District [hereinafter, "Superintendent McGruder"], received a standard District Use of Facilities Request Form from Plaintiff Darleen Fournier on behalf of Plaintiffs. (Exhibit "1") The Plaintiffs' stated purpose for use of the Defendant's school building was for "singing songs, hearing Bible lesson(s) and memorizing Scripture. Superintendent McGruder received another request on behalf of Plaintiffs from Reverend Steven D. Fournier of the Milford Central Community Bible Church, dated September 26, 1996. (Exhibit "2", ¶6)

5. On August 26, 1992, in accordance with §414 of the New York State Education Law.

the Defendant adopted District Policy Number 1500 entitled "Community Use of School Facilities" which limits the use of school premises to those specifically enumerated within the Policy. (Exhibit "3") The Policy provides, in relevant part, that:

> [s]chool premises shall not be used by any individual or organization for religious purposes.

6. On or about October 3, 1996, Superintendent McGruder denied Plaintiffs' requests to use school premises "identifying the Plaintiffs' proposed use of school facilities as the equivalent of religious worship rather than the expression of religious views on non-secular subject matter." (Exhibit "2", and Exhibit "A" thereto)

7. On or about January 7, 1997, Superintendent McGruder received a letter from Plaintiffs' counsel, Thomas Marcelle, Esq., alleging that the Defendant's denial of the use of its facilities for the teaching of Bible lessons to elementary students violated Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution, as well as their rights under the Religious Freedom Restoration Act. (Exhibit "2", and Exhibit "B" thereto)

8. On January 10, 1997, the Defendant

requested that the Plaintiffs furnish the Defendant with written materials which would be used by the Plaintiffs as part of their lessons, a description of their proposed activities, as well as an indication of who would be leading or supervising these activities. (Exhibit "2", and Exhibit "C" thereto)

9. On or about January 17, 1997, the Defendant received a general description of the activities of Plaintiffs.

> The Club's activities are run by Ms. Darlene Fournier. The Club opens its session with Ms. Fournier taking attendance. As she calls a child's name, if the child recites a Bible verse[,] the child receives a treat. After attendance, the Club sings songs. Next[,] Club members engage in games that involve, inter alia, learning Bible verses. Ms. Fournier then relates a Bible story and explains how it applies to Club members' lives. The Club closes with prayer. Finally, Ms. Fournier distributes treats and the Bible verses for memorization. (Exhibit 2, and Exhibit "D" thereto)

10. In addition, on or about January 23, 1997, the Plaintiffs forwarded to the Defendant various materials distributed by the Plaintiffs to

children during their sessions. Those materials included, inter alia, [a] a Good News Club invitation printed on a 3" x 3" index card; [b] a parental permission slip; [c] a sample puzzle; and [d] the "Daily Bread," a booklet used by the Good News Club for story telling. Further, the letter accompanying these materials stated that the children participating in the Good News Club are First through Sixth graders.

11. After reviewing the materials submitted by the Plaintiffs, the Defendant concluded that the kind of activities proposed were not discussions of non-secular subjects such as child rearing or the development of character and morals from a religious perspective but were the equivalent of religious instruction. (Exhibit "2", ¶13, and Exhibit "E" thereto)

12. On or about February 13, 1997, the Defendant wrote to the Plaintiffs asking that they consider postponing any litigation concerning the instant dispute until the United States Court of Appeals for the Second Circuit decided a case concerning a similar issue. That case, entitled Bronx Household of Faith v. Community School District No. 10, 95 CV 5501 [S.D.N.Y. 1996), involved the question of whether a school district can be required to allow the use of its facilities for the purpose of religious worship. In its decision, the lower court ruled in favor of the Defendant

District finding that it was not required to make its facilities available for such a purpose. (Exhibit "2", and Exhibit "F" thereto, containing the lower court's ruling)

13. On or about February 21, 1997, the Plaintiffs submitted to the Defendant a counterproposal, asking that the Plaintiffs be permitted to use the Defendant's facilities during the pendency of the Appeal of the Bronx Household case. The Plaintiffs agreed, that:

> [i]f the Second Circuit should affirm the decision, the Good News Club will immediately cease using the facilities. The Good News Club will review the decision and make a determination if it desires to bring legal action. If legal action is brought, the Good News Club agrees not to use to fact that the School District allowed it to use the facilities in any pleadings, motions, papers, argument, hearing, trial, or in any matter for any purpose in litigation. (Exhibit "2", and Exhibit "G" thereto)

14. On February 26, 1997, the Defendant's Board of Education adopted a resolution denying the Plaintiffs' request to use it facilities during the pendency of Bronx Household. This determination

was communicated to the Plaintiffs, by letter dated February 28, 1997 (Exhibit "2", and Exhibit "H" thereto), and again by letter dated March 3, 1997 (Exhibit "2", and Exhibit "I" thereto).

15. On March 7, 1997, the Plaintiffs filed a Summons and Complaint with this Honorable Court, pursuant to 42 U.S.C. §§1983 and 2000BB, alleging that the Defendant violated Plaintiffs' Constitutional right to Free Speech under the First Amendment; that the Defendant discriminated against the Plaintiffs in violation of their rights under the Equal Protection Clause; and, further, that the Defendant violated the Religious Freedom Restoration Act of 1993. (Exhibit "4")

16. On or about March 14, 1997, the Plaintiffs filed a Motion for a Preliminary Injunction against the Defendant to require the Defendant to allow the Plaintiffs to use its facilities to conduct its meetings. (Exhibit "5")

17. On or about April 3, 1997, the Defendant filed its Answer to Plaintiffs' Complaint. (Exhibit "6")

18. On April 14, 1997, oral argument was had on the Plaintiffs' Motion for a Preliminary Injunction before the Honorable Thomas J. McAvoy.

19. On April 17, 1997, Judge McAvoy granted the Plaintiffs' Motion permitting the Plaintiffs to use the Defendant's facilities pending the resolution of the case at bar. (Exhibit "7")

20. On September 15, 1997, Bronx Household was decided in favor of the Defendant School District. Bronx Household of Faith v. Community School District No. 10, 127 F.3d 207 [2d Cir. 1997).

21. There has been pre-trial discovery in this case. Annexed hereto as Exhibit "8" are examples of various songs sung with children who attend meetings of Plaintiffs' Good News Club and various materials used as learning exercises at Plaintiffs' meetings.

22. The Plaintiffs' agent, Reverend Stephen Fournier, as well as Plaintiff Darleen Fournier, were examined at an examination before trial on January 28, 1998. A copy of the transcript of this examination before trial is annexed hereto as Exhibit "9."

23. The Defendant denies each and every on (sic) of the Plaintiffs' allegations and contends that same are without merit. More particularly, the Defendant contends that the Plaintiffs' intended use of Defendant's facilities is for the purpose of conducting religious instruction in violation of

Education Law §414 and the District's Community Use Policy.

24. Throughout the papers which they have submitted in this action, Plaintiffs have repeatedly referred to the purpose of their meetings as being consistent with the purposes they attribute to the Boy and Girl Scouts, as well as the 4-H Club and Little League [e.g.: the moral development of children].

25. However, it is respectfully submitted that it is evident from both the materials submitted by Plaintiffs in this action, as well as the examinations before trial of Stephen and Darleen Fournier, the individuals who conduct the Plaintiffs' meetings, that the purpose of these meetings is to provide religious instruction to the children in attendance.

26. To begin, the name "The Good News Club" itself has a very definite religious significance. According to Reverend Fournier, "the good news is that Christ, according to the Scriptures, died for our sins, was buried and on the third day rose again." (Exhibit "9", pp. 24-25).

27. Also worth noting is the fact that, according to Stephen Fournier, the Club is composed solely of children who are of the Christian faith (Exhibit "9", p. 27).

28. Further, as can be seen from the booklet distributed by the Plaintiffs, the "Daily Bread," the stories contained therein continually make reference to receiving the Lord Jesus Christ, accepting the Lord Jesus as your Savior from sin, believing in the Resurrection and the descent of the Lord Jesus from Heaven. (Exhibit "2", and Exhibit "E" thereto)

29. As can also be seen from the lyrics of the songs presented to children during the Plaintiffs' meetings, those songs are not only religious in nature, they involve a belief in Jesus Christ as Lord.

30. Other materials submitted by the Plaintiffs also contain numerous references to Jesus Christ as Savior. In particular, they contain sections entitled "challenge and invitation" in which children are asked to have Jesus Christ as their personal Savior and to believe that Jesus died for their sins. (Exhibit "8")

31. The following excerpts from the transcript of the examination before trial of Reverend Stephen Fournier and Darleen Fournier (Miller Affidavit, Exhibit "9"), serve to further illustrate that the purpose of Plaintiffs' meetings is to provide religious instruction to elementary school-age children:

a) Page 34 - . . . because we are teaching

morals from a Christian perspective, we would present that perspective, which is that these morals or these values are senseless without Christ, that's to the children who know Christ as Savior, we would say, you know you cannot be jealous because you know you have the strength of God. To the children who do not know Christ, we would say, you need Christ as your Lord and Savior so that you might overcome these, you know, feelings of jealousy or overcome the desire to do bad things to those who have somehow hurt you.

b) Page 69 - What makes them meaningful, in my opinion, is a Christian perspective, is the fact that you need a relationship with Christ to fulfill them the way God would have you fulfill them.

c) Page 86 - We would challenge the-children. We would basically say, if you know Jesus as your Savior, you need to place God first in your life. And if you don't know Jesus as Savior and if you would like to, then we will --- we will pray with you separately, individually.

d) Page 90 - Challenge for the saved child, it would be presented as to ask God for strength to obey him completely. And then we would give an invitation that if you would like that strength to obey God and you would like to ask Jesus as your personal

Lord and Savior, come up and talk with us or Darlene and we will pray with you.

e) Page 91 - . . . And also the invitation would be if these children, if they don't know the Lord as their Savior, in order to overcome jealousy or to obey God or whatever value we're speaking of, they would need to have asked Jesus into their lives.

f) Page 94 - We would put that challenge and that invitation within the context of obeying God and his word. And the challenge would be, those of you who know Jesus as Savior, you can rely on God's strength to obey him. And those of you who do not know the Lord Jesus as Savior, do not have him in your heart and would like to receive him as Savior so you can obey God the way he wants you to, and if you would like, we have them either raise their hand or just go and see Darlene.

g) Page 96 - The challenge, again, we would present it to the children that if you know Jesus as your Savior, God will use you, if your heart is right with him, if you desire to do what he wants you to do, and we would from there say, if you do not know the Lord Jesus as your Savior and you would like to so that you too may obey God and have your heart right with God, raise your hand and we will speak with you privately or pray with you privately.

h) Page 136 - Christian perspective is that you need the Lord Jesus to help you to be able to give you the power actually to live a moral life.

i) Pages 146-147 - The challenge is for the children to take the moral lesson that was taught and to apply it to their lives. And the invitation, it gives the children an opportunity to seek Gods strength through a personal relationship with Jesus Christ to be able to do the same thing.

32. Upon information and belief, the activities of the Plaintiffs are not merely discussions of a secular topic from a religious perspective. Rather, they are religious instruction in, and based upon, the fundamental beliefs of Christianity.

33. Upon information and belief, given the materials used by Plaintiffs to conduct their meetings, as well as the materials contained in the transcript of the examination before trial of Reverend Fournier, the Plaintiffs clearly wish to engage in religious instruction of students in receiving Jesus Christ as their Savior from sin.

34. By contrast, there has been nothing submitted to the Court, nor is there anything in the examination before trial of Defendant's Superintendent of Schools, which indicates that

Defendant's facilities have been used previously for religious services or religious instruction. (Exhibit "10")

35. Upon information and belief, there are no questions of fact to require a trial in this matter and summary judgment should be granted to the Defendant.

WHEREFORE, it is respectfully requests that this Court grant Defendant's Motion for Summary Judgment.

/s/
Frank W. Miller

Sworn to before me this
2nd day of July, 1998.

/s/
Notary Public

Wendy S. Paninski
Notary Public in the State of New York
Qualified in Oswego Co. No. 4910021
My Commission Expires Nov. 2, 1999

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

The GOOD NEWS CLUB, Andrea Fournier and Darlene Fournier,	AFFIDAVIT
Plaintiffs,	97-CV-0302 TJM/DNH
vs.	
MILFORD CENTRAL SCHOOL,	Judge McAvoy
Defendant.	Mag. Hurd

STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS.:

DR. ROBERT C. MCGRUDER, being duly sworn, deposes and says:

1. I am employed by the Milford Central School District (the "District"), as its Interim Superintendent of Schools and have been continuously employed in that capacity by the District since September 1996.

2. I make this Affidavit in opposition to Plaintiffs' Motion for a Preliminary Injunction in the above-entitled action.

3. On or about September 22, 1996, I received

a standard District Use of Facilities Request Form from Plaintiff Darlene Fournier on behalf of Child Evangelism Fellowship and the Good News Club (a copy of the application is annexed to Plaintiffs' Motion for a Preliminary Injunction as Exhibit "2").

4. The stated purpose of the use of the District's school building was for singing songs, hearing Bible lessons and memorizing Scripture.

5. The District has adopted Policy No. 1500 entitled Community Use of School Facilities pursuant to New York Education Law Section 414, which limits the use of school premises to those uses specifically enumerated in the policy. In addition, the policy excludes use of the District's property for religious purposes (a copy of the policy is annexed to Plaintiffs' Motion for Preliminary Injunction as Exhibit "I").

6. I received an additional request on behalf of Plaintiffs from Rev. S.D. Fournier of the Milford Center Community Bible Church dated September 26, 1996.

7. On or about October 3, 1996, I denied Rev. Fournier's request identifying Plaintiffs' proposed use of school facilities as the equivalent of religious worship rather than the expression of religious views on secular subject matter (annexed hereto as Exhibit "A").

8. I received no further correspondence from Plaintiffs until I received a letter from counsel for Plaintiffs dated January 7, 1997. In that letter, counsel for Plaintiffs alleged that the District's denial of the use of its facilities for the teaching of Bible lessons to elementary students violated Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution, as well as their rights under the Religious Freedom Restoration Act (42 U.S.C. §2000 bb et seq.) (annexed hereto as Exhibit "B").

9. On or about January 10, 1997, a request was made for Plaintiffs to furnish the District with written materials which would be used by Plaintiffs, a description of their proposed activities, as well as an indication of who would be leading or supervising these activities (a copy of the letter dated January 10, 1997 from counsel to the District is annexed hereto as Exhibit "C").

10. On January 17, 1997, the District's counsel received a response which included a general description of the activities of the Good News Club (a copy of the letter dated January 17, 1997 is annexed hereto as Exhibit "D").

11. In addition, on or about January 23, 1997, Plaintiffs forwarded to counsel for the District various materials that the Goods News Club uses or distributes. Those materials included the following:

a) A Good News Club invitation printed on a 3x3 card
b) A parental permission slip
c) A sample puzzle
d) The "Daily Bread," a booklet which the Good News Club uses for stories.

In addition, the letter stated that children who participate in the activities of a Good News Club range from 1st graders to 6th graders (a copy of the letter dated January 23, 1997 and the various materials is annexed hereto as Exhibit "E").

12. As can be seen from the various stories taken from the "Daily Bread," the stories continually make reference to receiving the Lord Jesus Christ, accepting the Lord Jesus as Savior from sin, believing in the Resurrection and the descent of the Lord Jesus from Heaven.

13. As Interim Superintendent of Schools, it was my view that, the kinds of activities proposed to be engaged in by the Good News Club were not a discussion of secular subjects such as child rearing, development of character and development of morals from a religious perspective, but were in fact the equivalent of religious instruction itself.

14. On or about February 13, 1997, in response to the Board's request, counsel for the District wrote to counsel for Plaintiffs asking that Plaintiffs consider postponing any litigation until a case with

similar issue and that was before the United States Court of Appeals for the Second Circuit was decided, along with the decision of the District Court (a copy of the letter dated February 13, 1997 is annexed hereto as Exhibit "F").

15. On or about February 21, 1997, the District received a counter-proposal in which the Plaintiffs asked that the Good News Club be allowed to use the facilities during the pendency of the appeal before the Second Circuit, stating that both parties could then review the Second Circuit's decision and determine if either party wished to change its position (a copy of counsel for the Plaintiffs' letter of February 21, 1997 is annexed hereto as Exhibit "G").

16. On or about February 26, 1997, the Milford Board of Education adopted a resolution denying the request by the Good News Club to use school facilities for the purpose of religious instruction and Bible classes. That decision was transmitted to Plaintiffs by letter dated February 28, 1997, (a copy of the letter dated February 28, 1997 is annexed hereto as Exhibit "H"). In addition, on or about March 3, 1997, I wrote the Rev. Fournier indicating that the Board had denied the request for the use of District facilities for what it deemed to be the purpose of religious instruction and Bible study and that the Board felt that such use was not permissible under law and District policy (a copy of

this letter is annexed hereto as Exhibit "I").

17. The Plaintiffs then commenced this litigation under 42 U.S.C. §1983 against the District alleging that the District had engaged in "religious viewpoint discrimination" in violation of the Plaintiffs' rights.

18. Contrary to the allegations made by Plaintiffs both in their complaint, as well as their Affidavits in support of their Motion for a Preliminary Injunction, the Milford Central School District has not engaged in religious viewpoint discrimination in violation of constitutional law or the Religious Freedom Restoration Act. The District is not now and never has been opposed to the discussion of secular topics from a religious viewpoint as permitted under current law.

WHEREFORE, deponent respectfully requests that Plaintiffs' Motion for a Preliminary Injunction herein be denied.

/s/
Robert C. McGruder

Sworn to before me this
27th day of March 1997.

/s/
THOMAS H. KUTZER
Notary Public, State of New York

No. 02KU5054992
Qualified in Onondaga County
Commission Expires Jan. 29, 1998

October 3, 1996

Rev. S.D. Fournier
Milford Center Community Bible Church
RD#1, Box 169
Oneonta, NY 13820

Dear Rev. Fournier:

Thank you for your recent letter and for the enclosure from the Rutherford Institute. I too spoke with legal counsel and offer you the following information regarding Milford's policy on use of the school facilities.

Milford's current policy complies with New York Education Law and with relevant court decisions. I agree that Milford cannot prohibit access to organizations simply because of their religious nature. As you may know, the Lambs Chapel decision held that a school district could not prevent a religious organization from utilizing facilities to present a religious perspective on the subject of child rearing and family values.

However, your group's request to use the school facilities indicated such use would be for the purpose of "(sic) hearing a bible lesson and memorizing scripture". I understand such proposed use to be the equivalent of religious

worship, which is prohibited under our District policy, rather than the expression of religious views or values on a secular subject matter. To my knowledge, our facilities have not been used in the past by any organization for the purpose of religious worship.

If you would like to clarify your request to utilize the facilities, I will re-consider the matter with the Board.

Very truly yours,

Robert McGruder
Interim Superintendent

c: Board of Education

THOMAS MARCELLE
ATTORNEY AT LAW
71 DEVONSHIRE DR.
SLINGERLANDS, NEW YORK 12159
PHONE: (518) 475-0806
FAX: (518) 475-0321

January 7, 1997

Robert McGruder
Milford Central School
PO Box 237
Milford, New York 13807-0237

Dear Dr. McGruder,

I represent Steve Fournier and the Good News Club. It is my understanding that the School District has denied the Good News Club the use of school facilities to conduct its meetings. It is also my understanding that the School District has permitted other groups such as the Girls Scouts to use school facilities. Further, it is my understanding that the reason for denying the Good News Club the use of school facilities is because its teaches bible lessons at their meetings.

Denying the Good News Club the use of school facilities because its activity is religious in nature

violates its right to free speech, its right to equal protection of the law, and its rights under the Restoration of Religious Freedom Act.

If within two weeks the School District fails to reverse its position and allow the Good News Club to use school facilities, I will bring suit in the United States District Court to remedy the situation.

If you or the School District's lawyer have any questions, please call me. I look forward to your response.

Sincerely,

/s/
Thomas Marcelle

TM/em

THOMAS MARCELLE
71 DEVONSHIRE DR.
SLINGERLANDS, NEW YORK 12159
PHONE: (518) 475-0806

January 17, 1997

Norman H. Gross
Ferrara, Fiorenza, Larrison, Barrett & Reitz
5010 Campuswood Drive
East Syracuse, New York 13057

Re: Good News Club use of MCSD School facilities

Dear Mr. Gross,

In response to your letter dated January 10, 1997, below is a general description of the activities of the Good News Club.

The Club's activities are run by Ms. Darlene Fournier. The Club opens its session with Ms. Fournier taking attendance. As she calls a child's name, if the child recites a Bible verse the child receives a treat. After attendance, the Club sings songs. Next Club members engage in games that involve, *inter alia,* learning Bible verses. Ms. Fournier then relates a Bible story and explains how it applies to Club members' lives. The Club

closes with prayer. Finally, Ms. Fournier distributes treats and the Bible verses for memorization.

I have not yet received the literature from the Good News Club. As soon as I receive it, I will fax it to you.

I have spoken with my clients and the Rutherford Institute (who is funding this litigation) and they are eager to have this issue resolved. The Good News Club made application for use of the school's facilities in September. In October, Dr. McGruder told my client that based upon his discussion with legal counsel that the Club's application was being denied. I hope this second review of the Club's application can be accomplished swiftly. Please provide me with the School's decision by February 3, 1997.

Sincerely,

/s/
Thomas Marcelle

TM/em

xc: Mr. Stephen Fournier
Rita Wolfe, Esq., Rutherford Institute

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE GOOD NEWS CLUB, ANDREA FOURNIER & DARLEEN FOURNIER

v. 97-CV-0302 (TJM/GLS)
Notice of Cross Motion

MILFORD CENTRAL SCHOOL

NOTICE OF MOTION

SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Darleen Fournier, Paula Kiser, Randall Lamb, Raymond Lamb, Becky Edson, Steve Fournier, and Thomas Marcelle and the exhibits attached thereto, plaintiffs' statements pursuant to Rule 7.1 (f), plaintiffs' memorandum of law, all other proceedings had herein and all other papers that have been filed with the Court in relationship to the above referenced case, the undersigned, pursuant to Federal Rule of Civil Procedure 56, will move the United States District Court for the Northern District of New York (Judge Thomas J. McAvoy) at a term to be held at the United States Courthouse in Binghamton, New York on the ___ day of August, 1998, at 10:00 o'clock in the forenoon, or as soon thereafter as

counsel can be heard, for an order granting the above-named plaintiffs summary judgment and ordering Milford Central School to permit plaintiffs to use its facilities to conduct its meetings, and otherwise to cease and desist from further violating plaintiffs' the Constitutional rights well as such other and further relief that to this Court may seem just and proper, together with costs, disbursements, and attorney's fees pursuant to 42 USC § 1988.

Dated: July 29, 1998
Slingerlands, New York

Yours, etc.

Thomas Marcelle
Counsel for the Plaintiffs
71 Devonshire Drive
Slingerlands, New York 12159
Telephone: (518) 475-0806

To: Mr. Frank Miller, Esq.
Ferrara, Fiorenza, Larrison, Barrett & Reitz
Counsel for Defendant
5010 Campuswood Drive
East Syracuse, New York 13057

AFFIDAVIT OF DARLEEN FOURNIER

Darleen Fournier, being duly sworn deposes and states as follow:

1. My name is Darleen Fournier.

2. I am in charge of the organization of the Good News Club (hereinafter GNC).

3. Andrea Fournier is a member of the GNC, she is six (6) years old.

4. For the school year of 1995-1996 and from Sept. l0th - Sept. 16th, 1996 the GNC held and conducted their meetings at a location other than Milford Central School.

5. For the school year of 1995-1996 and from Sept. l0th - Sept. 16th, 1996 the children who were members of the GNC rode the bus to the GNC meetings.

6. On or about Sept. 16, 1996 GNC was informed by Milford School transportation director, Ken Cough, that the school bus would no longer transport children to GNC meetings or activities.

7. After the school bus would no longer transport members to the GNC meetings and activities I made the application (plaintiffs' exhibit 2) for use

of the school facilities by GNC.

8. Dr. McGruder never made any offer of any kind to accommodate GNC.

9. GNC is not associated with any public school or governmental agency.

10. There are no members of any public school or any other governmental agency who exercise authority (apparent or real) over the children.

/s/
Darlene Fournier

Sworn to me this 4th of April, 1997

/s/
Notary Public

MARJORIE R. CHASE
Notary Public, State of New York
Originally Qualified Otsego County
Commission Expires Dec. 31, 1997

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE GOOD NEWS CLUB, ANDREA FOURNIER & DARLEEN FOURNIER

v.

97-CV-030 (TJM/GLS)
Affirmation in opposition to defendant's motion for summary judgment and in support of plaintiffs cross motion of summary

MILFORD CENTRAL SCHOOL

AFFIRMATION OF THOMAS MARCELLE

THOMAS MARCELLE, being a duly licensed and practicing attorney of the State of New York and of the United States District Court for the Northern District of New York, affirms under penalty of perjury as follows:

1. I am counsel for the plaintiffs.

2. I make this affirmation in opposition to defendant's motion for summary judgment and in support of plaintiffs' cross motion for summary judgment.

3. In its brief at p. 4, defendant cites a

counter offer made by the plaintiffs in order to avoid litigation. Defendant's Exhibit 2, part G attached thereto.

4. In particular, plaintiffs offered that if defendant would let plaintiffs use its facility pending the of resolution *Bronx House of Faith* appeal, plaintiffs would leave if the Second Circuit affirmed the district court and then make a decision whether to bring a legal action.

5. Plaintiffs offered was not a tacit admission that *Bronx Household of Faith* case controlled this case. To the contrary, plaintiffs' counsel explicitly stated:

•2. The *Bronx House of Faith* case is significantly different to the Good News Club situation, and therefore not dispositive of Good News Club's right to use school facilities. First, the Good News Club is not a church conducting religious services; it is a youth organization that promotes Christian values (not any sect's doctrine or theology). Second, while the School District in the *Bronx House of Faith* case refused to permit any church services in its facilities, your client permits other youth organizations like the Boy Scouts, Girl scouts , and the

4H Club to use its facilities. While the Good News Club promotes Christian values, the School District can not discriminate against it on that ground.

•3. Case law supports our right to use the School facilities. The two cases upon which we will rely are *Good News/Good Sports*, 28 F3d. 1501 (8th Cir.) and *Church on the Rock v. City of Albuquerque,* 84 F3d 1267 (10th Cir.).

6. Defendant states pursuant to its statement of undisputed facts 6 that "During the pre-trial discovery phase of this case, plaintiffs produced the materials that Plaintiffs use in presenting lessons and holding club meetings." Exhibit 2 (part F attached thereto) and Exhibit 8.

7. Part of the materials contained in the above referenced exhibits is a booklet entitled "Daily Bread."

8. GNC neither teaches, reads, instructs, nor presents materials from the booklet entitled "Daily Bread" in Club meetings. Exhibit 12 at p.110-111.

9. The booklets are distributed to the children for their personal use as a reward for completing their quiet time calendar. Exhibit 12 at

p.110-111.

10. Your deponent was under the mistaken impression that "Daily Bread" was read to the children during club meetings. This impression was corrected by Mr. & Mrs. Fournier during preparation for their deposition in January 1998 and that correction was communicated to opposing counsel during Mr. Fournier's deposition on January 28, 1998. Exhibit 12 at p.110-111.

11. The flannel graph instructional book entitled "David"(Exhibit 7) contains the lesson plans and other materials that Mr. and Mrs. Fournier generally, but not exclusively, followed in presenting lesson to, singing songs and playing games with the children.

12. On or about July 2, 1998, your deponent called Professor Carl H. Esbeck of the University of Missouri School of Law.

13. Professor Esbeck was counsel for a Good News Club chapter in Missouri that brought suit against the Ladue, Missouri School District. *See Good News/Good Sports, 28* F3d 1501 (8th Cir., 1993).

14. Professor Esbeck provided your deponent addendum "C" (a promotional flyer for the Good News Club) to the Missouri GNC's brief

which is attached as Exhibit 8.

15. On or about July 27, 1998, your deponent called Child Evangelism Fellowship, Inc. ("CEF") and requested that it provide demographics concerning the number of Good News Clubs in the United States.

16. Mr. Joe Cox, vice president of CEF, provided by way of affidavit that there are 4,242 Good News Club across the United Sates with a total enrollment of 102,170. Mr. Cox's affidavit is attached as Exhibit 9.

17. Peter Livshin's deposition is attached as Exhibit 10.

18. Judge McAvoy's opinion dated April 14, 1997, granting plaintiffs a preliminary injunction is attached as Exhibit 11.

19. Steve & Darleen Fournier's deposition is attached as Exhibit 12.

Dated: July 27, 1998

/s/
Thomas Marcelle
Bar Roll No. 102117
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE GOOD NEWS CLUB, ANDREA FOURNIER & DARLEEN FOURNIER,

Plaintiffs,

-against-

MILFORD CENTRAL SCHOOL,

Defendant.

- -

Deposition of Defendant, MILFORD CENTRAL SCHOOL, by its agent, Peter Livshin, held pursuant to Notice, at the Otsego County Courthouse, Grand Jury Room, Cooperstown, New York, commencing at 2:20 p.m., Wednesday, January 28, 1998, before Brenda J. O'Connor, a Shorthand Reporter and Notary Public for the State of New York. [1]

APPEARANCES:
THOMAS MARCELLE, ESQ.
71 Devonshire Drive
Slingerlands, New York 12159
Attorney for Plaintiffs

FERRARA, FIORENZA, LARRISON, BARRETT & REITZ
5010 Campuswood Drive

East Syracuse, New York 13057
BY: FRANK W. MILLER, ESQ., of counsel
Attorneys for Defendant [2]

PETER LIVSHIN, having been first duly sworn by the Notary Public, was examined and testified as follows: EXAMINATION BY MR. MARCELLE:

Q Good afternoon.
A Afternoon.
Q Would you just state your name for the record, please?
A Peter Normal Livshin, Sr.
Q And are you employed currently?
A Yes.
Q In what capacity?
A School superintendent of the Milford Central School.
Q Okay. Now, Mr. Livshin, I'm going to ask you some questions about the school's policy for community use.
A Okay. Do you mind if I –
Q No, actually, if you have a copy, that's fine. I was going to give you a copy. I wanted to say -- just give you general parameter what I'm trying to do. That way if we get lost, you can ask me to rephrase the [4] question or put it in a different context for you, if you don't understand it.
A Okay.
Q I'm just going to try to find out basically the

breadth and the width of this policy and what it means.
A Okay.
Q If there's some question or example that I use that's not clear, just tell me and I'll rephrase it; is that all right?
A That's fine.
Q Okay.
MR. MARCELLE: Do you want that marked, Frank, or just refer to it as the school's policy
MR. MILLER: We might as well have it marked. He's got a copy there that --
MR. MARCELLE: Okay.
MR. MILLER: -- that I suppose we could use, or if you have a clean copy.
MR. MARCELLE: We can mark a clean copy, and I have a marked copy myself.
(Plaintiff's Exhibit 1 marked for [5] identification.)
Q Just let me show you what's been marked as Plaintiff's Exhibit 1 and ask you to review that.
A (Witness complies with request.) Do you mind if I use my copy?
Q Not at all.
A It will be easier for me to read.
Q I just want to make sure it's the same.
A Yes.
Q Will you identify Plaintiff's 1 for the record, please?
A It's the community use of the school facilities

of the Milford Central School, which was approved on August 26, 1992.

Q Has that policy been continuously in effect from August 26, 1992, until today?

A As far as I know.

Q Okay. Who has the authority to grant or deny an application made pursuant this policy?

A According to the policy, it's the superintendent of schools has that authority.

Q Who has the authority to interpret what the [6] policy means?

A The superintendent of schools.

Q I'd like to direct your attention under the heading where it says, use for non-religious purposes.

A Okay.

Q Could you -- in the first sentence there's a phrase, religious purposes. Could you explain what that phrase means?

A School premises shall not be used by any individual organization for religious purposes?

Q Yes.

A I would interpret that to mean conducting religious services, providing religious instruction or to an extreme, religious indoctrination into a philosophy or a belief.

Q It doesn't include any and all religious speech, I take it?

A I beg pardon?

Q It doesn't include any -- strike that. It doesn't include every aspect of religious speech, does it? [7]

A No.

MR. MILLER: Object to the form of the question. You may answer, if you're able to.

A I'm not really sure of what it is you're asking.

Q Okay. The policy doesn't preclude mentioning God at any time?

A That's correct.

Q On the premises; is that correct?

A That's correct, yes.

Q It doesn't preclude at any time from mentioning the name Jesus Christ on the --

A No, it does not.

Q Okay. Now, I wanted to just direct your attention to paragraph 3.

A Up top?

Q Up top.

A Okay. Where it states, "For holding social, civic and recreational meetings and entertainment events and other issues, other uses pertaining to the welfare in the community provided that such usage shall be [8] nonexclusive and shall be open to the general public."

Q Correct.

A Okay.

Q Would that use -- let me ask you this, does the policy permit the League of Women

Voters to sponsor candidates' debate pursuant to paragraph 3 which you just read?

A Yes, I would say that's a valid use.

Q Would the policy also permit a group to come in to conduct a debate on issues relevant to the community?

A Yes.

Q Would it include-a group to be able to come in and sponsor a debate on issues relevant to the country?

A Define what you -- I guess I --

Q Okay. That's a fair question. I mean, with respect to could a group come in and sponsor a debate whether or not there should be a constitutional amendment for a school prayer.

A Yes.

Q Okay. Is there any limitation on political [9] speech which can be conducted pursuant to the policy?

A I would be very hesitant about getting into that because I would -- there would be some issues where inciting a riot through political speech would create a problem. And if you're asking me to define what might do that, I'm not sure I could, but I would --

Q Well, absent incite a riot or subversive speech or illegal speech such as obscenity or pornography, absent those narrow exceptions, are there any other exceptions?

A In my capacity as the superintendent?

MR. MILLER: Excuse me, Mr. Marcelle, you're asking the question in reference to political speech?

MR. MARCELLE: Political speech.

MR. MILLER: And I take it by political speech you're not referring to a meeting of an organized political party?

MR. MARCELLE: No.

MR. MILLER: Because that's prohibited in the 414 and I just – [10]

MR. MARCELLE: I'm sorry.

MR. MILLER: No, I had a question about that. Do you understand now what he's asking you?

THE WITNESS: Not specifically. State it again because --

Q Let me say it this way: If someone or a group wanted to use the school to discuss any political idea that wasn't illegal or it wasn't about to incite a riot, is that permissible under the policy?

A Probably is. Now, the issue is would I agree to allow that in my capacity as superintendent, I don't know.

Q What would be some of the factors that would -- that would make you decide that you wouldn't allow it?

A The particular group or individuals who were asking to use the school facility might be a major factor. I think that would be the key

factor. If there were individuals who might -- who have demonstrated past practice [11] of being irresponsible and being able to handle a meeting or handle a situation.

Q The school policy allows entertainment events --

A Yes.

Q -- for community groups, correct?

A Yes.

Q Okay. I take it that would include concerts?

A Yes and no.

Q Okay. I suppose there would be certain limitation in types of concerts you would allow; is that correct?

A Yes.

Q Okay. Would you allow a Christmas concert that was comprised mainly of Christian choir music or traditional Christian songs?

A Are you talking about an outside group using --

Q An outside group.

A Probably.

Q I take it also the policy allows for outside groups to show -- put on plays and films of that nature, things of that nature? [12]

A The outside groups that have used the facilities since I've been there, I haven't seen films, but there -- obviously there were productions that were put on.

Q And that use is permitted under the policy?

A Yes.

Q And I take it, too, there would be certain exceptions under --

A Yes.

Q -- under that as well?

A Yes.

Q Would a film such as The Ten Commandments be allowed to be shown? And I say Ten Commandments, I don't know if you're familiar with the film. It's Charlton Heston.

A Yes, right, yes.

Q Are you familiar with the film called, The Jesus Film?

A No.

Q Okay. I'm going to describe the film to you, generally what the contents are, and ask you if that's something that would be allowed pursuant to the school policy. [13]

A Could I ask you a question?

Q Sure.

A Now, we're -- everything that you're stating is outside use, somebody coming in and showing --

Q Yes, I'm talking not about the school teachers or part of a class project, but a community group that has no affiliation with the school or its officers.

A Okay.

Q This is a film that a community group would like to show that recounts the life of Jesus according to the Gospel of Luke, and at the

end of the film declares Jesus is the Son of God and has the power to save a soul from hell. Additionally, the narrator of the film at its conclusion invites the audience to join him in a prayer for salvation.

A And I know this before the --

Q Imagine for a hypothetical here that's part of that purposes form of your --

A It's listed right there?

Q It's listed right there. [14]

A To be truthful, I would have to consult counsel, get an opinion on that --

Q Okay.

A -- before I would say yes or no.

Q Still under paragraph 3, just direct your attention now to social groups, groups like the Boy Scouts, the 4-H and the Girl Scouts. Are the Boy Scouts allowed to use the school --

A Yes.

Q -- facilities under this policy?

A Yes.

Q Okay. Is it consistent with the school policy to allow the Boy Scouts to recite their Scout oath on school policy?

A You mean on school grounds?

Q On school grounds, I'm sorry.

A Yes, they have their meetings, they have to.

Q Okay. And if one of the purposes of the Boy Scouts is to influence a boy's character, development and spiritual growth, would the

Boy Scouts still be allowed to use the school facilities? [15]

A Yes.

Q Okay. Would a group that wanted to teach children to read Aesop's Fables -- would a group that wanted to use, let's say, for example, teach children from Bill Bennett's Book of Virtues be allowed to --

A Got to help me out.

Q You don't know --

A No.

Q Strike that question. Would a group that wanted to use Aesop's Fables to teach children moral values by using those fables be permitted to use the school under the policy?

A I'd have to see what context they were going to be used in, what -- you know, what the purpose -- obviously the purpose of the group has to be more than the use of Aesop's Fables or --

Q Suppose someone comes in and reads, you know, the sour grapes story and teaches the children that it's not right to be bitter if you don't get something, things of that nature, just general moral values that are out there in [16] different literatures --

A Yes. Yes, I'm sorry. Yes.

Q Before I get to the last thing, I just saw a note that I wanted to get to and I almost forgot, and if I don't remember now, I'll

forget. Room 119, where is that located in the school?

A It's on the -- my direction's not all that good in terms of north, south, east, west. It's on the first floor midway down the hall on the left-hand side on the -- I believe it would be the west side of the school.

Q What is that room normally used for?

A It's -- that particular room is divided in half. There's a moveable partition in there now. On each side of it are two special education resource rooms, one is for -- one half of it is for a high school resource room, the other half is taught by another special education teacher for kids that are slightly younger than high school age, 12 and 13 years.

Q Is room 119 located in either of the elementary school rooms? [17]

A Yes, it's right next to the combined -- we have a multi-age third and fourth grade. If my memory serves me correct, the multi-age third grade is right next door and the fourth grade is one door down.

Q Is room 119 itself used for any elementary classes?

A No.

MR. MARCELLE: Sorry for that diversion, but I would have forgotten if --

MR. MILLER: No problem.

Q Let's go back to paragraph 1 of the policy.

A Okay.

Q And that reads, for the purpose of instruction, any branch of education of learning or the arts; is that correct?

A Okay.

Q I take it an outside group could petition the school for use to teach academic subjects pursuant to that provision?

A Make sure I qualify, barring any issues of subcontracting within the teachers' contract, yes. [18]

Q Okay. If an outside group, given your caveat, wanted to come in and teach a course that the earth was created by the big bang or other cosmic accident, would that be permitted?

A Sure.

Q And if a group wanted to come in and teach that man was the product of evolution, would that be permitted?

A If I would allow the so-called big bang concept versus, you know, an evolution, yes.

Q Would you allow a group to come in and teach that man was created by God as described in the Book of Genesis?

A If I allowed the other two, I would be hard pressed not to allow the third, under those conditions.

Q Could someone also come in pursuant to, I guess, either paragraph 1 or 3 and conduct a seminar on the causes of crime, and their thesis being the cause of crime is poverty?

A Yes.
Q And could someone come in and teach a course on teenage pregnancy and the thesis being that [19] the pregnancy -- the crisis of teenage pregnancy is because of the lack of good sex education in the public schools?
A Could I qualify that answer?
Q Sure.
A That doesn't sound like they're teaching anything. That sounds like they're more editorializing. And I would have a problem -- I would have a problem with that, considering the nature of the health programs and programs within the school.
Q Could a group conduct a seminar on teen pregnancies and list a whole host of factors that may contribute without signaling out one for special treatment?
A I would probably approve it, but not without a great deal of controversy from segments of the community.
Q Okay. Could a group come in and -- pursuant to the policy and hold a seminar or course attributing the cause of crime in our society to their lack of faith in God?
A I would think that I would have to allow that [20] as long as it was stated -- you know, stated along those particular lines. I think that probably if I were to allow one, I would allow the opportunity for the opposite side, whichever group wanted to come in and

speak. If I would allow, for example, the group who made that statement that you referred to in terms of poverty being the result of lack of faith in God, I would allow the other group the same time to give a presentation. I would try to encourage more of a public presentation of both points of view at the same time.
Q All right. And I take it from your answer that that would be an appropriate use for the school?
A My interpretation. There may be others that might have a different interpretation of that.
Q But I also understand you're the one who has the power to --
A As my being the superintendent, yes. Another superintendent might have a difference of opinion.
Q Okay. Have you ever seen the Good News Club [21] in action?
A No.
Q Outside of sitting here today and listening to the depositions of the Fourniers, what is your knowledge of what the Good News Club does?
A Well, I've heard what this is --
Q I know.
A I don't know what to tell you other than --
Q Let me ask you this, let me ask you it another way. Outside of -- prior to today, outside of the application submitted to the

school and the papers that are part of this litigation, is there any other source of knowledge you have of what the Good News Club does?

A No.

Q I take it you're -- let me ask you. Under your interpretation of this policy, Exhibit 1, does the Good News Club qualify for use of the school facilities?

A Not the way the building use form is written. I would have to say no based on Education Law 414 and the district's policy.

Q And it's – [22]

A Again, that's my interpretation of it.

Q And it's objectionable because --

A May I get a copy, of the building use form that Darleen --

MR. MILLER: Are you asking him these questions based on the building use form or are you asking him about --

MR. MARCELLE: No, based on the building use form.

MR. MILLER: All right.

MR. MARCELLE: Or anything else he knows from the course of the litigation prior until today.

MR. MILLER: Well, I think --

A This is the one from September of '96, not the one that's filled out this year.

Q I think it's almost identical, but we can use that.

A It's a group of boys and girls meeting one hour a week for fun, singing songs, is that hearing -- hearing Bible lessons and memorizing Scripture. And it sounds -- my interpretation [23] would be that the last two, hearing Bible lessons and memorizing Scriptures would tend to make it in my mind more, for lack of a better phrase, talking, Catholic school, more of a church school type of scenario.

MR. MARCELLE: Trying to find my exhibit list.

MR. MILLER: The exhibits for today, you're looking for, Tom?

MR. MARCELLE: Yes, I had a list I made up.

MR. MILLER: I have them all here.

MR. MARCELLE: Do we have Exhibit D?

MR. MILLER: Yes.

Q I'm going to show you Exhibit D, what's been marked Exhibit D for identification, just ask you to review it.

A (Witness complies with request.) Okay.

Q Under the description -- strike that. Pursuant to the description of the Good News Club as outlined in Exhibit D, would the Good News Club qualify for use of the school [24] facilities?

A Again, the problem that I have that I would need clarification on, children hear Bible story and learn Scripture, I don't know in what sense -- in what sense that would

mean. Is the Scripture being presented -- how do I want to say this? In a historical approach, in a -- using a particular, either part of the Old Testament or New Testament to deal with moral issues, or is it -- or is it used to – and again, I have to be biased here because I've sat here all morning, to promote the gospel. And if that's indeed the case, then I have a problem with it in terms of using the school for that purpose. Whatever my personal beliefs are, but I would say as the superintendent --

Q And the problem is that it violates that non-religious use clause; is that correct?

A It does in any interpretation of the community use of facility, board policy, and my limited knowledge of Education Law 414.

MR. MARCELLE: Can I just talk with [25] Steve for a second? I think that I'm probably about finished.

(A short recess was taken)

MR. MARCELLE: Just one last thing to clarify a point, under paragraph 1 of the policy.

Q Outside of religious education, religious instruction, is there any limitation with respect to the instruction that can be conducted pursuant to paragraph 1?

A I would have some serious problems. The purpose of instruction was to incite riot, I would have some serious concerns. If the

purpose of the instruction - - want to be careful in saying this. If the purpose of instruction is to create an environment that's unwholesome, unhealthy, immoral in nature, and it's a very, very loose interpretation of that, but - -

Q Okay. Outside of those caveats, the incite to riot, and we'll just say, I'll just use the phrase immoral for right now, is there any other limitation that you can think of? [26]

A Or any type of activity, for example, that might cause physical harm to the building or an employee, example, group might want to come in and use the facility for speed ball and they would do it outside the gym area or, you know, something where the facility would actually get physically harmed, use of the chemistry lab, something like that.

Q With respect to putting on a theatrical production, a play, a concert or a film, is there any limitation with respect to that?

A Yes.

Q Okay. And what --

A Again, films that -- God, I hate using this phrase because it's not -- immoral in nature, pornographic in nature, and not using the Supreme Court's definition of it, a much more loose interpretation of that, a film that is extremely violent in nature. And the best example I could give you, I would take a lot of heat, but I would never allow the film The

Clockwork Orange to be shown in the Milford School even in a film course, if it were [27] offered.
MR . MARCELLE: No more questions.
MR. MILLER: Okay, great.
(Whereupon the proceedings were concluded at 2:49 p.m.)

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PLAINTIFF'S EXHIBITS

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE GOOD NEWS CLUB, ANDREA FOURNIER and DARLEEN FOURNIER,

Plaintiffs,

-verses- 97-cv-302

(MOTION DECISION)

MILFORD CENTRAL SCHOOL,

Defendant.

TRANSCRIPT OF PROCEEDINGS held in and for the United States District Court, Northern District of New York, at the James T. Foley United States Courthouse, 445 Broadway, Albany, NY 12207, on MONDAY, APRIL 14, 1997, before the HON. THOMAS J. McAVOY, United States District Court Judge. [1]

APPEARANCES :

FOR THE PLAINTIFFS :

THOMAS MARCELLE, ESQ.

FOR THE DEFENDANT :

FERRARA, FIORENZA, LARRISON, BARRETT & REITZ

BY: NORMAN H. GROSS, ESQ. [2]

THE CLERK: The Good News Club versus Milford Central School, 97-CV-302. May I have the appearance for the plaintiff, please.

MR. MARCELLE: Thomas Marcelle for plaintiffs.

THE CLERK: On behalf of the defendants.

MR. GROSS: Norman Gross for defendants.

THE COURT: All right. This is a motion by the plaintiff for preliminary injunction to permit plaintiffs to use defendant's facility to conduct its meetings.

Mr. Marcelle, you have to tell me why you are entitled to summary judgment.

(Following oral argument, the Court rendered the following oral decision:)

THE COURT: All right. Thank you. Very interesting. I see neither counsel cited a case of Toby Tyler versus Tioga Central School District. Did you see that case?

MR. GROSS: That's the Travis case, your Honor?

THE COURT: Are you familiar with it?

MR. GROSS: I am, yes.

THE COURT: I am glad somebody is. The plaintiffs, The Good News Club, Andrea Fournier and Darleen Fournier, come before the Court today

seeking a preliminary injunction to permit The Good News Club to [3] hold meetings at Milford Central School, the defendant herein. More specifically, the plaintiffs have alleged that by denying them the right to meet at the school, the defendant has violated the plaintiffs' First Amendment right to free speech, the Religious Freedom of Restoration Act, 42 U.S. Code Sections 2000bb et seq. and the Equal Protection Clause.

In general, to obtain a preliminary injunction, plaintiffs must show that they are likely to suffer possible irreparable injury if the injunction is not granted and either a likelihood of success on the merits of their case or sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in their favor. Reuters Limited versus United Press International, 903 Fed 2d 904, at 907. Where the moving party seeks to stay governmental action taken in the public interest pursuant to a statutory or regulatory scheme, the District Court should not apply the less rigorous fair-ground-for-litigation standard and should not grant the injunction unless the moving party establishes, along with irreparable injury, a likelihood that he will succeed on the merits of his claim. Plaza Health Labs, Inc. v. Perales, 878 Fed 2d 577, 580.

There's a sharp dispute between the parties as to which prong of the preliminary injunction test applies, assuming the Court first determines that

irreparable harm will result in the absence of an injunction. On the authority of Deeper Life [4] Christian Fellowship, Incorporated versus The Board of Education of City of New York, 852 Fed 2d 676, 680-681, the Court finds that the second less rigorous fair ground for litigation test should be applied in the context of this case.

In Deeper Life, a similar factual scenario was at issue. A New York school, acting pursuant to New York Education Law Section 414 governing the use of school facilities, denied after-hours use of the school building to a religious organization planning to conduct religious activities at the facility. Although there are factual issues in this case that distinguish it from Deeper Life, such as the nature of the plaintiff group and the activities that would be conducted on school grounds, these factual differences do not mandate that the Court apply the likelihood of success test to the injunction inquiry. This is because the factual differences do not show that the plaintiffs seek to stay governmental action taken in the public interest pursuant to a statutory or regulatory scheme. Thus, if the Court finds that the possibility of irreparable harm exists, it will then turn to whether this case presents fair ground for litigation.

As to the issue of irreparable harm, it's well established that the loss of First Amendment freedoms for even minimal periods of time unquestionably constitutes irreparable harm.

Paulsen versus County of Nassau, 925 Fed 2d 65 at 68. The defendant argues that because The Good News Club, the GNC, [5] has not yet used the defendant's facilities, or even met as a group, there's no harm at all. The plaintiffs counter that the GNC has met previously and that the defendant used to provide transportation for GNC members but no longer will. This leads to the question -- I am sorry. This led to the request by the GNC to use the Milford School cafeteria. That request was denied. The very denial means that the GNC cannot meet. According to plaintiffs, it is this alleged inability to meet for reasons based on religious viewpoint of the GNC that has impinged their First Amendment right to free speech. The Court notes that since the violation of a constitutional right is the irreparable injury asserted by the plaintiff in this action, the two prongs of the threshold showing required for injunctive relief merge into one. In order to show irreparable harm, plaintiff must show a fair ground for litigation. See Bery versus City of New York, 906 Fed Supp 163, 166. Therefore, the Court now turns to an inquiry of that issue.

The plaintiffs allege The Good News Club, GNC, is a youth organization that promotes and teaches Christian values. The GNC is open to any child between the ages of 5 and 12. Moreover, the GNC is not affiliated with any church and does not teach any particular religious sect's doctrine or theology. I am not sure after our argument this

morning that that's still the case.

The GNC requested the use of the Milford School [6] cafeteria between the hours of 3:00 and 4:00 PM for meetings. This request was denied by phone by Dr. Robert McGruder, Superintendent of Milford Central School, on the basis that religious groups are prohibited from using the school building. A subsequent letter, dated October 3, 1996, was sent to GNC by Dr. McGruder formally denying GNC the use of the Milford School cafeteria. The letter stated that the GNC's activities were considered the equivalent of religious worship, which is prohibited under Milford School policy.

The primary basis for the plaintiffs' suit is the claim that they are entitled to use Milford School facilities but have been denied such use solely because they conduct activities and convey a message from a religious viewpoint. Other groups use the facility, such as Boy, Cub and Girl Scouts and 4-H. The plaintiffs contend that they, like the other groups, are a youth group teaching young people values. The only ostensible difference between the GNC and other groups, a difference that is not conceded by the GNC, is that the GNC teaches those values from a Christian religious viewpoint.

The defendant argues that the Court should not grant injunctive relief for the reason that the plaintiffs cannot show a likelihood of success on the merits. Defendant does not directly address

the issue of whether plaintiffs' case presents fair ground for litigation. Nevertheless, the Court notes that the defendant argued that the GNC meetings are [7] actually religious lessons, and that such conduct makes the GNC remarkably different from scout troops and other organizations that have been granted use of defendant's facilities.

In addition, the defendant opposes granting the injunction because, in its view, the setting will expose unsophisticated and impressionable young children, as opposed to adults or even older children, to the GNC message. It is the defendant's contention that such young children may be unable to distinguish between the subject matter endorsed by the school during school hours and that endorsed by a religious group meeting after hours at the school. Finally, the defendants suggest that by permitting the GNC to use its cafeteria will run afoul of the Establishment Cause.

For the reasons I will state momentarily, the Court finds that this case raises fair grounds for litigation and the balance of the hardships tips decidedly in plaintiffs' favor. Thus, plaintiffs are entitled to injunctive relief.

There's no question that the defendant can limit the use of its facilities and that it need not permit even those uses provided for in Section 414 of New York's Education Law. See Lamb's Chapel versus Center Moriches School District, 508 US 364, 392-393. However, once it has established itself as a limited forum by permitting certain

categories of outside uses of its facilities, the State, in the person of the defendant, must respect the lawful boundaries it has itself set. See [8] Rosenberger v. Rector and Visitors of University of Virginia, 115 S.Ct. 2510 at 2517.

In the instant case, it's undisputed that the defendant has opened its facilities for certain uses, namely, the purpose of instruction in any branch of education, learning of the arts, for holding social, civic and recreational meetings and entertainment events and other uses, provided such uses will be nonexclusive and shall be open to the general public. That's from the Policy of the Milford Central School District at page 1. In particular, scout groups and other youth groups have been given permission to use the defendant's facilities.

Clearly, as demonstrated by the exhibits submitted with each side's papers, a primary purpose and/or the content of these groups is to teach young people proper habits and values. The Supreme Court instructs, quote, "With respect to public property that is not a designated public forum open for indiscriminate public use for communicative purposes, control over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purposes served by the forum and are viewpoint neutral." Lamb's Chapel at 392, 393. However, if the request for use by the GNC would not have been denied for any reason other than the fact that the meetings

would have been from a religious perspective, the denial is impermissible because it is not viewpoint neutral. Lamb's Chapel at 393-394. [9] More recently, the Supreme Court elaborated when it stated, quote, "When the Government targets not subject matter but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The Government must abstain from regulating speech when the specific motivating ideology or the opinion of the speaker is the rationale for the restriction." Rosenberger at 2516. Thus, there is a distinction between content-based discrimination, which is permissible if it preserves the purposes of a limited forum, and viewpoint discrimination, which is impermissible when directed against speech that otherwise is within the purposes of the forum. Rosenberger at 2517.

In the instant case, the central dispute relates to each side's understanding of the content of the plaintiffs' GNC meetings. Is the content religious, as alleged by the defendant? Or is it non-religious but presented from a religious viewpoint, as alleged by the plaintiffs? Both sides have strenuously argued in their brief that Lamb's Chapel and Rosenberger are or are not controlling thick. The Court need not decide this issue today. Rather, the Court holds that Lamb's Chapel and Rosenberger pinpoint the critical issue in this case;

that is, the content of GNC's meetings. That is an issue discussed at length in Lamb's Chapel and Rosenberger and in a number of Second Circuit decisions. See, for example, [10] Deeper Life, which I have cited previously today. Clearly, this issue presents fair ground for litigation as it can only be resolved after full and complete proof of the nature of the GNC's programming. See Jack Kahn Music Company, Inc. versus Baldwin Piano & Organ Company, 604 Fed 2d 755, 763.

The Court also finds that the balance of hardships turn in plaintiffs' favor. First, the plaintiffs, although they have not yet used the defendant's facilities, will, in the absence of injunctive relief, be left without a viable meeting place. It has been alleged that the defendant has discontinued the practice of busing GNC members to the former location. Thus, without transportation, it may be impractical for the group to meet. In addition, the fear that the defendant has expressed of confusion of the young non-member students at Milford is sufficiently minimized by the fact that the meetings are not being held during school hours and in a location other than the classrooms. Thus, there is less chance that the students will witness the meetings or mistakenly perceive the meetings as a part of their state sponsored curriculum. See, Lamb's Chapel and Deeper Life previously cited.

Finally, the defendant's concerns as to violating the Establishment Clause have been

addressed previously in, among other cases, Deeper Life. In Deeper Life, the concerns that were raised about the Establishment Clause were [11] sufficiently minimized by the fact that the plaintiffs' program was after school hours and related to topics permitted by the school generally when presented by other groups. See Deeper Life, 681. Notably, in Deeper Life, although somewhat factually dissimilar from the instant case, the Second Circuit found that there was fair ground for litigation and the balance of the hardships tipped decidedly in favor of the plaintiff such that injunctive relief was properly imposed.

For the reasons stated here today, the Court grants the plaintiffs' motion for a preliminary injunction permitting the Good News Club to use the Milford Central School cafeteria pending final resolution of this case to commence after the plaintiffs file a $25,000 bond with the Court pursuant to Rule 65(c).

So if the plaintiff will submit an order.

MR. MARCELLE: Yes, Judge.

THE COURT: Suppose I ought to put on the record and state that the Court is of the Roman Catholic faith and was also a school board member for five years. That's kind of a balancing. I don't think it requires disqualification or recusal, though.

(Court adjourned at 11:41 AM.) [12]

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE GOOD NEWS CLUB, ANDREA FOURNIER & DARLEEN FOURNIER,

Plaintiffs,

-against-

MILFORD CENTRAL SCHOOL,

Defendant.

- -

Deposition of Plaintiffs, THE GOOD NEWS CLUB, by its agent, Stephen Fournier, and DARLEEN FOURNIER held pursuant to Notice, at the Otsego County Courthouse, Grand Jury Room, Cooperstown, New York, commencing at 9:30 a.m., Wednesday, January 28, 1998, before Brenda J. O'Connor, a Shorthand Reporter and Notary Public for the State of New York. [1]

APPEARANCES:

THOMAS MARCELLE, ESQ.
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Attorney for Plaintiffs

FERRARA, FIORENZA, LARRISON, BARRETT &

REITZ
5010 Campuswood Drive
East Syracuse, New York 13057
BY: FRANK W. MILLER, ESQ., of counsel
Attorneys for Defendant [2]

STEPHEN FOURNIER, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY MR. MILLER:

Q Good morning, sir. My name is Frank Miller. I'm going to ask you some questions, and if at any time you don't understand my questions, just let me know and I'll rephrase the question. Can we agree upon that?
A Yes.
Q All right. Would you state your full name for the record, please?
A Stephen Douglas Fournier.
Q And how old are you?
A 36.
Q And your date of birth, please?
A February 4th, 1961.
Q And where were you born and raised?
A I was born in Westerly, Rhode Island, and raised in Montville, Connecticut.
Q How long have you lived in the Milford area?
A About four and a half years.
Q Okay. What is your current address? [4]

A 2582 State Highway 28, Oneonta, New York 13820.
Q What is your educational background?
A I've graduated from high school and I have a diploma in Bible, and I'm currently working on my degree in Biblical studies.
Q Okay. Where did you attend high school?
A Montville High School.
Q In Connecticut?
A Yes, sir.
Q And what year did you graduate?
A 1979.
Q And where did you attend Bible school?
A Bethany Bible College. I did not attend physically, I took correspondence courses.
Q Okay. And in what years did you take courses through that institution?
A Let me think. I probably began, and I couldn't say for certain what my first year there -- it was probably in '88.
Q Did you receive a diploma or certificate at the end of your courses of study?
A Yes. [5]
Q Okay. What is the nature of the diploma or certificate that you received?
A it's a diploma in Biblical studies.
Q Okay. And what year did you receive that?
A It would have been sometime in 1990, and I'm just -- I'm not -- I can't say that for hundred percent sure.
Q I'm sorry?

A It would be around that time. I'm not exactly sure.
Q All right. And that certificate was issued by Bethany College?
A Bethany Bible College and Seminary, yes.
Q And where is Bethany Bible College?
A It's in Dothan, Alabama, Dothan.
Q Could you spell that for the record?
A D-O-T-H-A-N.
Q And you indicated you're currently working in Biblical studies?
A Yes.
Q And through a particular institution?
A Bethany.
Q Okay. And is that also by correspondence? [6]
A Yes.
Q And are you working toward a particular degree or diploma?
A Yes.
Q And what degree or diploma would that be?
A BA degree in Biblical studies.
Q And would that be a bachelor's or master's?
A It would be my associate's.
Q Okay. What is your current occupation?
A I'm a village missionary. And which would -- is a pastor of a church, is basically --
Q And what church are you the pastor of?
A Milford Center Community Bible Church.
Q How long have you served in that position as pastor?

A In that church?
Q Yes, sir.
A About four and a half years.
Q Okay. Previous to that what did you do for a living?
A I was a pastor.
Q Okay. And where were you a pastor?
A In Montville, Connecticut. [7]
Q Okay. And is there a particular church there that you were assigned with or assigned to?
A Yes.
Q And what was that church?
A Montville Union Baptist Church.
Q And how long were you the pastor there?
A Full-time, about a year.
Q Okay. Previous to that, what was your -- the nature of your employments or occupation?
A I was a maintenance mechanic.
Q Okay. And where were you a maintenance mechanic?
A In Montville, Connecticut.
Q And how long were you employed as a maintenance mechanic in Montville, Connecticut?
A Approximately five years.
Q What was your reason for parting from the Montville Union Baptist Church after one year as pastor?
A As I stated earlier, I'm a village missionary, and the goal of Village Missions is to supply full-time pastoral leadership to small [8]

churches in rural areas, and I was sent out on the mission field, basically, Montville was my home church.
Q I see. Okay. Village Missions, is that -- is that an organization to which you belong, or are employed by?
A Yes.
Q Okay. Can you describe what that organization is? I'm not familiar with it.
A They are a non-denominational missions organization that supply full-time pastoral leadership to churches in rural areas in North America.
Q Okay. Prior to the time that you were employed as a maintenance mechanic were you involved in any other line of work or occupation?
A I was a maintenance mechanic at another factory.
Q I see. And how long did you serve as a maintenance mechanic in the prior factory, the one prior to Montville, Connecticut?
A I would say it was about four years, but I'm [9] not -- I'm not certain.
Q Were you ever in the military?
A Yes, sir.
Q Okay. When were you in the military?
A I entered in the military September of '79.
Q What branch were you in?
A Air Force.
Q And how long did you remain in the

military?
A About three and a half years.
Q Okay. And what type of discharge did you receive?
A Honorable.
Q Would I be correct in my assumption that after your time in the Air Force, you became employed as a maintenance mechanic in Connecticut?
A No.
Q Okay. Was there something between that time when you left the Air Force and went to work as a maintenance mechanic?
A Yes.
Q Okay. What was that that you did?
A When I first was honorably discharged from the [10] Air Force, I worked as an electrician.
Q How long did you work as an electrician?
A That was about six months.
Q And then what did you do after that?
A Then I went to work for Electric Boat.
Q And where was that?
A In Groton, Connecticut.
Q And how long were you employed there?
A Approximately six months.
Q And then what did you do after that?
A Then I was employed by New England Dairies in Hartford.
Q What did you do for New England Dairies?
A I began on the shipping platform, and then I was put in maintenance.

Q And how long were you employed by New England Dairies?
A Four years, approximately.
Q And then after that what did you do?
A That was when I was -- went to the place in Montville, ran Whitney Robertson.
Q What was the name of that?
A Whitney Robertson. [11]
Q What was your reason for leaving Electric Boat in Groton, Connecticut?
A More money.
Q Okay. What kind of training did you receive in the Air Force?
A I was an electronics navigational systems specialist.
Q Okay. Now, at the -- you are married at the current time, as I understand it?
A Yes, sir.
Q Okay. And your wife's name is Andrea?
A No, sir.
Q Oh, I'm sorry, your wife's name is Darleen, pardon me.
A Yes.
Q And what's your date of marriage?
A June 13th, June 13th.
Q Do you recall the year?
A 1980. Right? No, strike that, '81.
Q Okay. And I understand you have several children?
A What do you mean by several?
Q Well, you have a few kids, I guess? [12]

A I have three.
Q Their names and ages, please?
A Brooke, she is 11, Andrea, age seven, and Bethany, age four.
Q Now, does your oldest -- do two of your children currently attend the Milford Central School District?
A Yes, sir.
Q And how long has Andrea attended the Milford Central School District?
A She is in her third year.
Q Now, are you familiar with an organization known as the Good News Club?
A Yes, sir.
Q Okay. What is your current relationship with the Good News Club?
A I am the teacher.
Q Now, can you describe the organization for me known as the Good News Club, what is it and what does it do?
A We are a club for elementary-aged children who seek to instruct children in morals from a Christian perspective. [13]
Q How long has the Good News Club been in existence, that you're involved with here?
A I'm sorry. I didn't hear the last part of the question.
Q How long has the Good News Club, how long has that been in existence that you're involved with here in the area?
MR. MARCELLE: I'm going to object. Do

you mean the local chapter here as opposed to the national organization?
MR. MILLER: The local chapter, that's correct.
A I believe this is our second year.
Q Was there a period of time when the Good News Club held its meetings in a local church?
A Yes.
Q Okay. Were you involved with the local Good News Club at that time?
A No.
Q Okay. Are you familiar with the meetings of the Good News Club that occurred in a local church?
A I'm not sure I understand what you mean by [14] that question.
Q You're aware, I take it, that prior to the time that the Good News Club began to meet in the Milford Central School building, that the club apparently met in a local church, am I correct in that?
A Yes, you are.
Q Okay. Do you have any familiarity with the activities of the club while it was meeting at the local church?
A Yes, I do.
Q What local church did the Good News Club meet at?
A Milford Center Community Bible Church.
Q This is the church at which you're the

pastor?
A That would be correct.
Q And how many years did the Good News Club meet at the Milford Center Community Bible Church?
A I think it was just a year, but it could have been two. The years kind if just blend together. It may very well have been two. That would be --
Q All right. During the time that the Good News [15] Club met at the Milford Center Community Bible Church, how were the children brought from the school to the church for their meetings? Are you familiar with that?
A Yes, sir.
Q Okay.
A They were transported by two different means during two different periods of time.
Q Can you tell me about those?
A First they were transported by bus, and then transported privately by parents or a parent.
Q When they were transported by bus, what organization provided the bus to students?
A Milford Central School.
Q And when they were transported by parents, do you know who the parents were who were transporting the children?
A Yes.
Q Okay. Who were they?
A A woman by the name of June Lamb.

Q Any others involved in the transporting of students?
A I could not give you any other names. [16]
Q Okay. During the period of time that the Good News Club met at the Milford Center Community Bible Church, approximately how many students from the Milford School District participated in the club?
A I could not give you an answer to that.
Q Okay. Do you have any records that would -- that would answer that question for us?
A No, I do not.
Q Do you know if there are any records in the possession of the club or the church that would have that answer for us?
A There are no records in possession of the club or the church that would have that record.
Q Do you have an estimate of the approximate number that were involved in the club when it met at the church?
A I would estimate maybe eight to 10, that's a guess.
Q And how many students are involved in the club at the present time?
A Over 20.
Q Now, is the Good News Club at the local level [17] affiliated with a larger or parent organization?
A Yes.
Q Okay. Can you tell me what organization

that is?

A CEF, Children Evangelism Fellowship.

Q And what is the Children's Evangelism Fellowship?

A It's a organization that runs Good News Clubs.

Q Okay. Do they do anything besides run Good News Clubs?

A I am really not familiar with all that they do.

Q Okay. Is the Children Evangelism Fellowship organization connected with any religious group or denomination?

A Not that I'm aware of.

Q How is it that -- or what is it, rather, to the extent that you know, that the Children Evangelism Fellowship does in relationship to the local Good News Clubs?

A If you could rephrase that?

Q Sure. Describe for me what involvement, if any, the Children Evangelism Fellowship has with the running of the local Good News Club.

A They provide us with the material for the Good News Club.

Q Anything else?

A Support.

Q Anything else?

A Training is available through them.

Q Anything else?

A Nothing that comes to mind, sir.

Q Okay. What kind of materials do they supply

for the club?

A They supply all the teaching materials.

Q Okay. Do they provide anything else?

A There's other materials available that we can use if we choose to.

Q Are the use of materials supplied to you in your capacity as the teacher at the Good News Club for a fee or a charge of some kind?

A Yes.

Q Okay. And is the Christian -- or the Children Evangelism Fellowship organization a [19] for-profit or not-for-profit organization?

A I do not know.

Q Okay. The fees that are charged for materials, do you know what type of a fee structure they have for that?

A I don't understand the question.

Q All right. Do you know what you're paying for the materials that you supply or that are supplied to you from the Christian Evangelism Fellowship organization?

A Yes, I do.

Q Okay. How much are you paying for materials and so forth?

A It depends what materials you're referring to, sir.

Q All right. Well, you mentioned some teaching materials.

A It would be approximately $30 for one quarter of teaching materials.

Q Okay. And is that just the teaching manual for the $30 that you're paying for?
A No.
Q Okay. What do you receive for the $30? [20]
A We receive the manual use, I would say, some song sheets, things that we can copy to distribute to the children, that sort of thing.
Q All right. Other than purchasing those kinds of teaching materials, have you purchased anything else from the Children's Evangelism Fellowship organization?
A Yes.
Q What are the other kinds of things you've purchased from them?
A We've purchased Daily Bread, little booklets, they're called Daily Breads. That's all that I can recall at this point.
Q Now, you also mentioned that the Children Evangelism Fellowship provides support. What type of support do they provide?
A Prayer support. If there's a situation that arises that you may not know how to handle or, you know, they would be there to support us in that manner as well, emotional support.
Q When you mentioned prayer support, what did you mean by that? [21]
A They pray for us, they -- my wife and I is running the club. They would just pray for the club in general.
Q All right. Now, when you say they, who

specifically within the Children Evangelism Fellowship organization are you aware prays for you and your wife in a club?
A Ted and Anna Webb.
Q And who are they?
A Ted is the -- I believe he's referred to as the tri-county director of CEF.
Q Where's he located?
A Afton, New York.
Q Does the Good News Club ever pray for Ted and Anna Webb?
A No.
Q Does the Good News Club as part of its routine or part of its regular activity pray for anyone?
A Yes.
Q Okay. What are the nature of the prayers that are said by the Good News Club as part of its regular activity? [22]
A We have an opening prayer that is just a general prayer.
Q Anything else?
A Just a general prayer.
Q Okay. Any other kinds of prayers said during the club meetings?
A There may have been a prayer at some point for missionaries that are supported by CEF or --excuse me, I should say that are CEF missionaries.
Q Any other types of prayers said by the club?
A There may be at times prayers said to receive

Jesus as their personal Savior.

Q Any other kinds of prayers that are said?

A Not that come to mind, no.

Q Okay. Is the Good News Club, at the local level in which you're involved, is that an incorporated organization?

A I have no idea.

Q Okay. The Children Evangelism Fellowship organization, is that an organization that is affiliated with Christian groups?

A Could you please repeat the question? [23]

Q Sure. I'm asking about the Children Evangelism Fellowship organization. Is that a Christian group?

A Yes.

Q Okay. Is it affiliated with any particular denomination within the Christian faith?

A No.

Q The Christian Evangelism Fellowship organization, is that considered to be of a Protestant Christian denomination in general?

A No.

Q Okay. The Good News Club, where did the name Good News Club originate or come from?

A I have no idea.

Q Okay. Does the phrase, the good news, have any significance in Scripture?

A Yes.

Q Okay. What is the significance of the

phrase, the good news?

A Are you asking what the good news is?

Q Yes, sir.

A According to the Scripture, the good news is that Christ, according to the Scriptures, died [24] for our sins, was buried and on the third day rose again.

Q Is that what is referred to in the title of the club, the Good News Club?

A I would assume so.

Q Okay. Now, in regard to the club and its activities, can you describe for me a typical meeting of the Good News Club?

A Children come into the room, they are asked if they can recite the memory verses from the past week. If they are able to do that, they put their name on the board and they'll receive a prize or candy or something of that nature later on. We then open with a short word of prayer. Then we sing a song. I may get this order mixed up, you know --

Q All right.

A 'Cause, as I said, I'm basically the teacher. And then I believe that it's at that point that we learn -- begin to 'go over the memory verses for that week, and we will play a game that helps them to remember that verse, sort of like a drill. At that point we go to the [25] story, which will present some sort of moral value. Then we -- if we have time -- excuse me, we do have review questions concerning

the story. And then if we have time, we will go over what's known as the missionary story, which is a -- I'm assuming they're fictitious stories that deal with some part of the world where missionary activity is going on. And then we have a drawing for the quiet seat prize. It's just a name that's picked out of a little cup with names in it. And children are -- a child will be awarded for that. There may be -- during the course of Good News Club we may sing another song besides the opening song that we sing. And then the children are dismissed. And there is, of course, other details that -- you know.

Q All right. Now, you indicated in response to one of my earlier questions that there are now over 20 students in the club?

A Yes, sir.

Q Okay. What is the age range of the students that are in the club? [26]

A The youngest are in kindergarten. And I believe that we do have a 7th grader, but I'm not -- I'm not positive that he's a 7th grader.

Q And who can join the club?

A Anybody, any child.

Q Do you have any children of faiths other than Christian in the club?

A We have nonchurch children, if that's the question. As far as -- we don't ask them what denomination or what faith they are.

Q But from what you know of the children who attend, are there any children of the Jewish faith in the club?

A Not that I'm aware of.

Q Are there any children of the Muslim faith of which you are aware of?

A I do not know.

Q Now, when you indicate there are some nonchurch children, what does that phrase nonchurch mean?

A They don't attend church.

Q Okay. And the children who are described as [27] nonchurch children, are those children, however, who would consider themselves to be Christian?

A I have no idea.

Q Now, in order to be a member of the club, is it necessary that the children participate in the various elements of the club activities?

A No, sir.

Q Have you had any children up to this point who have declined to participate in any of the club activities?

A No, sir.

Q Okay. Now, the various verses that are recited at the beginning of the club day or the club meeting period, are those verses from the Bible?

A Yes, sir.

Q Okay. Are they verses from the New or the Old Testament?

A Both.
Q Okay. And in order to get your name on the board and get a prize, is it necessary that the child be able to recite the verse [28] accurately?
A No.
Q Okay. What do you require of the child in respect to the knowledge of the verse?
A Basically that they have a basic knowledge of the verse. We don't expect them to quote it verbatim.
Q And when you go through the verses, do you expect or anticipate that each child will describe in some fashion the verse of the day?
A I'm not sure I know what you're asking.
Q Do you ask the verse of each child?
A No.
Q Okay. Are there some children who then don't participate in the recitation of the verse?
A Yes, sir.
Q How many children in the class do you call on to recite the verse?
A It's just a general -- most of the kids know that's the routine and we just say, if anybody knows their verse, come see, you know, Mrs. Fournier and she'll, you know, listen to see if you know your verse. [29]
Q Okay.
A It's -- it's just -- when they come in, they

know, they know what to do, you know, they know if they know the verse.
Q The way it works, if the child comes in and knows the verse, he will come up to Mrs. Fournier and say, I know the verse, and recite the verse and get his name on the board and eventually get a prize, is that the way it works?
A That's correct.
Q Now, you indicated you open with a short prayer. What are the types of prayers that you open with?
A Be a prayer of thanksgiving, thanking God to allow us to be here, asking Him to bless the meeting.
Q Do you lead the group in that prayer?
A Yes, sir.
Q And other than asking God to bless the meeting, are there other religious references in the prayer?
A I'm not sure I understand the question. [30]
Q Okay. Let me rephrase it then. In the opening prayer, is there mention of or prayer to Lord Jesus Christ?
A Yes, sir.
Q Okay. Is that a part of the typical opening prayer?
A Yes, sir.
Q And in the opening prayer, what specifically are you praying for?
A That God would bless the meeting and,

again, a prayer of thanksgiving that we're together.

Q Okay. Are there occasions in the opening prayer in which you pray that the children will accept the Lord Jesus Christ as their Savior?

A I have never prayed that in the opening prayer.

Q Okay. Are there times in the club meeting when you do pray that?

A When I pray that? No.

Q With the club.

A No.

Q Are there times in any club activity in which [31] there's a general prayer that the children accept the Lord Jesus Christ as their Savior?

A I'm not really sure I understand what you're asking.

Q Okay. Are there occasions during the club meetings when accepting Jesus Christ as their Savior is part of the lesson or part of the instruction?

A Yes.

Q Okay. Can you explain to me under what circumstance that occurs?

A That occurs during the story at some point.

Q Okay. And that's what you describe as the story with a moral value?

A Yes, sir.

Q Okay. Can you give me an illustration of

some of the stories that are used during the club meetings?

A Want me tell you a story?

Q No, perhaps you can just identify --

A Well, I'll just -- example of the last two weeks, the week prior to yesterday we learned the story of Saul and how his jealousy caused [32] him to want to kill David. And this past week, we learned a story of even though Saul wanted to kill David, David's response was to do good to Saul and not take revenge. Thus, the moral lesson was they need to do good to those who try to hurt us.

Q As part of that story, or as part of any of those stories, are you also teaching a portion of the New Testament as well as the Old?

A It depends on the story.

Q Okay. Have there been occasions when you have taught stories from the New Testament?

A Me personally? No.

Q Okay. Do you know whether stories from the New Testament were taught in class meetings or group meetings when you were not present?

A I'm not aware.

Q Okay. Now, in your earlier answer, you had indicated that during the course of the story, there are occasional references to accepting Christ as the Savior. In what way does that -- is that a part of the story-telling or

explanation process? [33]

A Well, because we are teaching morals from a Christian perspective, we would present that perspective, which is that these morals or these values are senseless without Christ, that's to the children who know Christ as Savior, we would say, you know you cannot be jealous because you know you have the strength of God. To the children who do not know Christ, we would say, you need Christ as your Lord and Savior so that you might overcome these, you know, feelings of jealousy or overcome the desire to do bad things to those who have somehow hurt you.

Q Now, you also indicated that you sing songs or that the group sings songs. Are those songs that are sung of a religious nature?

A It depends what you mean by religious nature.

Q Are there references to God or Jesus Christ in any of the songs that you sing in the club meetings?

A Yes.

Q Okay. Are there -- since I asked the question with both, I'll ask the question more simply [34] this time, and that's are there occasions when you sing songs where there are references to Jesus Christ?

A Yes.

Q Okay. Now, you also indicated that you will instruct the children in memorizing a verse.

Isn't that part of your club process?

A Yes, sir.

Q Okay. And the verses that the children are called upon to memorize during the club meetings, I take it those are verses from Scripture?

A Yes.

Q Okay. And are some of those verses from the New Testament as well as the Old Testament?

A Yes.

Q Okay. Now, the games that you play, what are the types of games that are played during the club activities?

A Would you like an example?'

Q If you could, please.

A Well, yesterday, we had a game they call sparkle. And all the kids stood up and they [35] each say one word from the memory verse that we're holding up. And at the end of the verse, the last child will say sparkle and the one next to that child has to sit down. And it just keeps going around until there's only one standing, be that type of game.

Q All right. So it's a game played while going through the verse from the Bible?

A Yes, sir.

Q Okay. Are there other games that are played in the club meetings?

A There may be some games in reference to

the review questions.

Q Okay. What kinds of games, could you describe those?

A Just an example would be the last time we met, we had one child stand behind another child and we asked the question, and whoever answers it first moved on to the next child and so on and so forth.

Q Okay. The games that are played, do they all revolve around teaching the verse that is the subject of the day's lesson? [36]

A No.

Q Would it be fair to say, though, that most of the games that are played are those that revolve around teaching the verse that is the subject of the day's lesson?

A No.

Q Okay. What are some of the other purposes for which the games are played then?

A To get them to understand the story. The moral significance of the story.

Q I'm --

A The moral significance of the story as well as the details of the story.

Q So it relates either to the verse or to the story?

A Yes.

Q Okay. And now the story that you've just been describing, is that different from the missionary story that you were also describing?

A Yes, sir.

Q Okay. What -- could you give me an explanation of the missionary story? [37]

A Briefly, the missionary story for this quarter was of two young Haitian boys, one boy is a --is a -- goes to a Bible study and he invites the other boy to that Bible study, and that boy ends up going and the conflict that it causes with his father, and in the end the father ends up going as well.

Q Would it be fair to say that the missionary stories have to do with spreading the gospel?

A Yes.

Q And now you also indicated that at the -- near the end of the day or the club activities, another song is sung. Isn't that correct?

A I'm sorry?

Q Another song is sung just prior to the end of the club activities?

A At some point within the club activities, not necessarily in the -- at the end.

Q Okay. All right. Now, at the -- as part of the dismissal process, are additional prayers said?

A No.

Q Okay. Is there a concluding prayer of some [38] type that occurred at the end of a club meeting?

A No.

Q Is there any kind of that concluding activity that occurs at the end of the club meeting?

A As I stated, they draw names for the quiet seat prize. We give out the prizes for those who have their names on the board. And we give out what is called the verse tokens, that has the verse that they're asked to memorize during the following -- that week for the following club.

Q What kind of prizes are awarded?

A Candy, pencils, balls. We've given out different little just toys or just little things.

Q Okay. Any of the objects that are awarded as prizes, are any of those objects of a religious nature?

A Yes.

Q Could you give me an illustration of some of the prizes that are of a religious nature?

A Maybe a pencil might say God loves you or [39] something of that nature.

Q How long does the typical club meeting take?

A Typically -- I think it's -- I'm sorry.

Q That's all right.

A I'm just trying to think of when we start. Typically an hour.

Q Is there a particular time at which the club meetings begin and are scheduled to end?

A We begin approximately at 3:00, and that depends on when the people are out of the room. We don't get started until the room is clear. And we strive to end at 4.

Q Okay. What room is the club meeting

currently held at?

A Room number?

Q Yes.

A 119.

Q And is that an elementary classroom?

A I do not know.

Q Okay. And at the end of the club activity at 4:00, are the children then free to go home?

A They're free to go home, but we just don't let them leave. [40]

Q Okay. What is the process for letting the children out of your control?

A We make sure that their parents are there, or the ones who walk, you know, they're dismissed because their parents know they'll be walking home, but for the younger ones especially, they're held until their parents or Darleen and I bring some of the kids home.

Q Okay. Are any of the children transported home by bus after the club meeting?

A No, sir, not that I'm aware of.

Q Now, Mr. Fournier, were you involved with the process of requesting the use of the school facility approximately a year ago?

A Yes.

Q And in the course of that process, did you cause to be submitted an application for building use?

A Did I submit one?

Q Yes, did you submit one?

A Yes.

Q Okay. Now, in regard to the application for building use, what was your reason for [41] requesting the use of the school facility?

A It was two fold. First, and the main reason in what really got it all going was that we were told that the children could no longer ride the bus to the club.

Q Did you inquire about why they could no longer ride the bus to the club?

A My wife did.

Q What information, if any, were you or your wife given as to the reason why they could no longer ride the bus?

A Because there was too many children on the buses.

Q Okay. What was the reason why you chose to request the use of the school facility though?

A Because we couldn't ride the bus, the children had no transportation to the church.

Q Was the church still available for use by the Good News Club if transportation were provided?

A Yes.

Q Okay. Did the club always meet on Tuesdays?

A Yes. [42]

Q Okay. Did you make any inquiry of the school officials as to whether other transportation arrangements could be made

so the club could meet perhaps on Tuesday or another day of the week?

A No.

Q Did you have any meetings with any school officials concerning the determination with regard to transportation for the club members?

A We never met with them, no.

Q To your knowledge, were there any conversations between you or your wife with school officials concerning the transportation issue?

A My wife spoke with someone concerning that issue.

Q Okay. Do you know the substance of any of those conversations?

A The substance was that the children would no longer be allowed to ride the bus to the Good News Club because there was too many people on the bus.

Q All right. Were you given any information [43] about alternatives that were available other than using the school building for your meetings?

A By whom?

Q By school officials.

MR. MARCELLE: Could you define that item for me?

MR. MILLER: I'm assuming we're talking about the superintendent, any principal, board members, those persons.

A I did speak with a board member, yes.
Q Okay. Did you have a conversation concerning alternatives in regard to the transportation question?
A His alternative was for us to meet at the Presbyterian church, which is no longer a church. It's owned by the Historical Society, which this board member happened to be president of, and they would charge us to use that building. And the kids were told that they could walk down there, which we found the whole thing to be unacceptable.
Q Okay. Who was the board member with whom you [44] had spoken?
A Jim Haverner.
Q Could you say --
A Jim Haverner.
Q Did you explore other alternatives in regard to other places for the children to meet for the Good News Club?
A No, sir.
Q Now, did there come a point in time at which you learned that the school officials would not make the premises available to you for your club activities?
A Yes.
Q Okay. When did you first become aware of that?
A You want the date?
Q As best you can recall. It doesn't need to be precise. If you can recall an approximate

date, that would be fine.
A I'm not sure. I'm not certain. If I saw some of the correspondence that I have with Dr. McGruder I could tell you, but I don't want to say a month and be off. So – [45]
Q Okay. Well --
MR. MILLER: Well, why don't we do this then. Let's begin there.
THE WITNESS: Okay.
MR. MILLER: If you want us want to have that one marked as an exhibit, that's a copy of our response to your interrogatories. You should have a copy of that already in your possession.
MR. MARCELLE: I do. You know, maybe if we just for the record refer to it as whatever the exhibit number is in our papers are so we -- if it's already marked as an exhibit number -- for example, this, I think, is Exhibit 1 in your response to interrogatories.
MR. MILLER: But that's one of several pages. If you prefer to have that marked, just for purposes of clarity, I think I may have another copy of that though.
MR. MARCELLE: I have your response so I have a copy he can look on.
MR. MILLER: Look here, let's do it [46] this way so it doesn't get confusing. Why don't we trade that. If you hand me that other item back, then we'll have this marked as an exhibit.

(Defendant's Exhibit A marked for identification.)

Q Showing you what has been marked as Defendant's Exhibit A and ask you if you can identify that for me?

A It's the use of facility request form.

Q And that was the form that was completed apparently by your wife?

A Yes, sir.

Q Okay. And do you understand that to be the original building use request form that was submitted in September of 1996?

A Yes, sir.

Q Okay. Now, at the top of Defendant's Exhibit A, it refers to the Child Evangelism Fellowship as the name of the organization. That's the same organization as you were referring to earlier in your testimony?

A Yes, sir. [47]

Q Okay. What do you understand the phrase evangelism to mean?

A Evangelism would be introducing children to Jesus Christ.

Q And what do you understand the word fellowship to mean?

A Meeting downstairs in the church and having dinner.

Q But in this particular case, does it have any particular significance?

A Not for me, no.

Q All right. And it lists here the title of the

Evangelism Good News Club. Is that the way the club has always been described, to your knowledge, as the Good News Club?

A To my knowledge, yes.

Q Now, if you would please take a moment and review the portion of the document following the phrase, purpose of the event.

A (Witness complies with request.) Yes, sir.

Q Is that writing there which follows the phrase, purpose of the event, is that an accurate description of what the Good News [48] Club was doing?

A It would be a very general description, yes.

Q Now, in addition to that, was there anything else submitted with this application, do you recall?

A I do not recall. I do not believe so, but I don't recall.

MR. MILLER: Get that marked.

(Defendant's Exhibit B marked for identification.)

MR. MARCELLE: Just keep this for a second, Frank.

MR. MILLER: Oh, sure.

Q Referring your attention to Exhibit B, are you familiar with this document?

A I possess a copy of this, yes.

Q All right. Was this document or one similar to it submitted in connection with your application for building use back in 1996?

A No, sir.

Q Was a certificate of liability insurance submitted at any time in connection with your request for building use? [49]
A This year, yes.
Q Okay. Would that be Exhibit B?
A I-- we did not submit it personally.
Q Okay. Do you know who did?
A I am -- I cannot say for sure. I assume that it was Ted Webb.
Q Okay.
A That was --
Q Do you know how Exhibit B came to be in existence?
A We were asked for a certificate of liability insurance from Mr. Livshin.
Q And when did Mr. Livshin make that request?
A That would be at the beginning of this school year.
Q Okay. And when you received the request from Mr. Livshin for some form of liability insurance coverage what, if anything, did you do about it?
A We got in contact with Ted Webb and asked him if we had liability insurance. He informed us we did and we requested a certificate be sent to the school. [50]
Q And to your knowledge, is that how Exhibit B came about?
A To my knowledge.
Q Who supplied the information that appears

at the bottom of Exhibit B?
A Description of operations?
Q Yes, sir.
A I have no idea, but it's in error.
Q All right. In what way is that an error?
A Good News Club is in no way church-sponsored.
Q Who sponsors the Good News Club then if the church doesn't?
A It's my wife and I.
Q Your wife and I -- your wife and you are the sponsors of the Good News Club, is that what you're telling me?
A Maybe you should define sponsor.
Q Well, it appears on the document and I'm asking you if that's accurate in the description. You've indicated that it was an error --
A That's true.
Q -- in reference to the sponsorship. And what [51] I'm asking you is, is that then, if it's an error, in what way is it an error? And you indicated that it was because the church doesn't sponsor it. What I asked you then was who does sponsor it. Are you able to answer that question?
A I don't know if you defined sponsored, but we are the ones who initiated the Good News Club to come to here. We are the ones who provide funds. We are the ones who privately, my wife and I, provide means of --

we get together the prizes, we do all that sort of thing. So if that's what you mean by sponsored, then we – my wife and I are the sponsors of the Good News Club.

Q What relationship, if any, does the Child Evangelism Fellowship organization have then to you?

A Again, they provide the material, they provide support, training, and we would be under their -- their guidance, their rules and their restrictions or whatever. We would fall under them. You know, if we weren't doing something [52] proper, they would say, you know, you need do it this way and not that way.

Q Okay. But it is listed on here that the insured is the Child Evangelism Fellowship organization from Ontario, New York.

A Um-hum.

Q Are you an employee of that organization?

A No, sir.

Q Are you an agent of that organization?

A I don't know.

Q All right. Are you named anywhere in this certificate of liability insurance as a person who is either a sponsor or an insurer?

A No, sir.

Q Okay. What relationship, if any, then do you have with the Child Evangelism Fellowship organization from Ontario, New York?

A I'm not sure what legal term I would fall

under.

Q Okay.

A I know I've had to sign forms for them in regards to my character and that kind of thing. So I guess -- I don't know whether [53] legally I'm an agent or not. I do not know.

Q Okay. Are you paid a salary for teaching at the Good News Club?

A No, sir.

Q All right. Are you given any kind of remuneration or compensation for that at all?

A No, sir.

Q Are your expenses reimbursed by anyone?

A No, sir.

Q Does the Child Evangelism Fellowship organization have any relationship to the church at which you are pastor?

A No, sir.

Q Does the Child Evangelism Fellowship organization have any relationship to the Village Missionary organization?

A No, sir.

Q Now, when you spoke with Mr. Webb, did Mr. Webb tell you that you were covered by this policy of insurance?

A I personally did not speak with Mr. Webb.

Q Do you know who did?

A My wife. [54]

Q Did your wife tell you what information Mr.

Webb had relayed to you about the insurance coverage?

A That he would send a certificate of insurance to -- to school, and we would receive a copy.

Q Okay. But referring back to the building use request form which you have before you as Exhibit A, the name of the organization is, again, listed as the Child Evangelism Fellowship organization, isn't that correct?

A That's what it says, yes, sir.

Q And the name of the insured on Exhibit B is listed as the Child Evangelism Fellowship organization?

A Yes, sir.

Q Isn't that also correct?

A Yes, sir.

Q On Exhibit B, there's nowhere listed your personal involvement within this matter; is that correct?

A You're referring to Exhibit B as –

Q Yes, sir.

A -- as if that is the certificate that is now [56] in force when that is not. This -- we had another certificate sent to the school with the proper listing and the description of organizations because we were made aware that this one was -- that one was in error.

Q Then what was the error then?

A Church-sponsored.

Q Okay. So it was otherwise accurate in all other respects; is that correct?

A As far as my knowledge, yes.

Q Okay. And you don't know what relationship, if any, you have to the Child Evangelism Fellowship organization; is that correct?

A I am not aware of what it would be referred to legally, no.

Q Now, earlier you had mentioned that the man you had contact with was Ted Webb from Afton, New York, I believe you said?

A Yes, sir.

Q But this organization lists its address as Ontario, New York?

A I also stated that Ted Webb was the tri-county director of CEF. [56]

Q All right. And the organization that's based in Ontario, is that where its home office is?

A I don't believe so, but I'm not -- I'm not certain.

Q Do you know what the organization from Ontario, New York is?

A Do not.

Q Have you had any dealings with that organization?

A I've had dealings with CEF, not for anyone that I recall from Ontario, New York.

Q Okay. Now, are you familiar with the Church Mutual Insurance Company?

A Yes, sir.

Q Okay. And in what way are you familiar with the Church Mutual Insurance Company?

A It's a twofold. I am aware of them in that I spoke with them regarding this certificate, and I also am aware of them because that is where my church gets its insurance from as well.

Q On what did you speak with Church Mutual about in regard to this certificate? [57]

A I called to speak with Doug Smiley, who is no longer there, to my knowledge, and spoke with his secretary and told her that the Good News Club was not in fact church-sponsored and we would like to get a new certificate of liability insurance issued with a correction made in that area.

Q And was a new certificate issued after your conversation with Mr. Smiley's office?

A Yes, it was.

Q Okay. Now, you had indicated the same insurance company also insures the church at which you are pastor?

A Yes, sir.

Q Okay. Now, at some point in time, after you made this application for building use, did there come a point in time at which you had some conversations with Dr. McGruder concerning your building use request?

A Yes, sir.

Q All right. What was the first of those conversations that you had with Dr. McGruder?

A What was the first? [58]

Q Yes. Do you recall the first conversation you had with him about the building use request?

A I -- I don't know if I recall. I spoke with him on different occasions. As far as what was first and second, I could not tell you.

Q Okay. What's your best recollection of what you can recall discussing with him first?

A I had called or he had called, I'm not sure which one, regarding the use of facility. He had said that he had gone through this before with some priest up somewhere and that he had denied him. So he didn't see how we were going to be allowed to use the school. They weren't really pleasant conversations.

Q Can you tell me what, if anything, was unpleasant about the conversations?

A Well, for instance, he said that -- I asked him if I could get a copy of the school policy. He said he didn't have the school policy. He then began to tell me what it said, and then he said, hold on a minute and I'll read it to you. It's evident that he was lying to me for some reason. He did not want [59] me to have a copy of the policy. I asked him if we could come in and sit down and talk. He said, no, it wouldn't be necessary, I do not wish to discuss it, and that he would -- he was going to be talking with the board concerning this.

Q Was anything else discussed in the conversation between you and Dr. McGruder that you can recall?
A Not -- not offhand. I'm sorry.
Q Okay. Can you describe for me his tone of voice when he spoke to you?
A He was very abrupt. I thought he was rude.
Q Did there come a time that you exchanged some written correspondence with Dr. McGruder in connection with this matter?
A Yes, sir.
Q Okay. Do you recall what you did in that?
A Not offhand. I would have to see the correspondence to -- could it be possible for me to use the restroom?
MR. MILLER: Oh, absolutely. Why don't we take five. [60]
(A short recess was taken.)
Q I believe we left off, I was asking you some questions about correspondence with Dr. McGruder. Am I correct that you had some written correspondence with Dr. McGruder?
A Yes, sir.
MR. MILLER: Might as well mark that, if you don't mind.
(Defendant's Exhibit C marked for identification.)
Q I'm showing what has been marked Exhibit C and ask you if you can identify that document for me?
A This was a letter that was enclosed with

some information sent to us by the Rutherford Institute regarding what we believed our rights were in this matter.
Q Did you forward that to Dr. McGruder after you had spoken to him concerning your original request to use the building?
A Yes.
Q Okay. And was that letter also forwarded to him after the time that you had spoken to him [61] in the conversation that you just described a few minutes ago?
A I believe so, yes.
Q Did Dr. McGruder make a response of any kind to that letter?
A I believe I spoke with him on the phone following that letter, yes.
Q Can you describe for me please what, if anything, took place during that phone conversation?
A He said that it didn't matter -- basically I'm just not -- you know, not verbatim, but it didn't matter, that he did not believe what the Rutherford Institute had stated applied in this circumstance. In fact, he equated the Rutherford Institute with the Clark Foundation, which I don't know how he arrived at that, but --
Q What did you understand that to mean?
A I understand that to mean is he didn't care who said what, we weren't using it. That was his tone. That was basically the gist of what

I was getting, that it didn't matter what [62] information was sent, we would not be using the building.

Q Okay. Do you recall anything else from the conversation with Dr. McGruder?

MR. MARCELLE: Sorry. This is the second conversation we're talking about?

MR. MILLER: That's correct. We're talking about this conversation, the second conversation?

A It may have been the second or third time we spoke on the phone.

Q But in the conversation that we've been talking about, which was subsequent to Exhibit C, what I want to know is was there anything else discussed in that phone conversation?

A I don't believe so, just the fact that the information that we had sent was not pertinent to this case or to this situation and we weren't going to be allowed to use the building.

Q Did Dr. McGruder give you any additional reasons or rationale for the position that he had taken? [63]

A There were at times when he said that this was -- worship was not allowed in the school or in any of the school facilities. And he had stated that, in his opinion, was worship.

Q Did he give you some indication as to why he was expressing that particular opinion, what

was it that led him to the conclusion that it was worship?

A He may have referred to the purpose of event on the use of the facility request form. I think he made reference to that.

Q Okay. Do you recall what specifically he identified as the purpose that he found objectionable?

A Specifically, no, sir.

Q Now, after your phone conversation with Dr. McGruder following the letter, which is before you as Exhibit C, what occurred next in the sequence of events that brought about this litigation?

A I believe we once more got in contact with the Rutherford Institute. They said that they were interested in helping us to go forward in [64] this issue, and that they would, I guess, put us in touch with a lawyer from the area who they felt would be competent to handle the case.

Q Did you have any further conversations with Dr. McGruder?

A Not that I can recall.

Q Okay. Other than Dr. McGruder then, did you have any conversations with other school officials, such as the board members or principal --

A Yes.

Q -- or persons of that sort?

A Yes, sir.

Q All right. Can you tell us who you spoke with?
A I spoke with Jim Haverner, I think that's how you pronounce his name. I'm not sure.
Q A board member?
A Was he president of the board at the time? Yes.
Q When did the conversation with Mr. Haverner occur? [65]
A It took place, I believe, after the first conversation with Dr. McGruder.
Q And what, if anything, was discussed by you and Mr. Haverner?
A The use of the school building was discussed.
Q Was the conversation in person or by telephone?
A It was by telephone.
Q Okay. Did you initiate the call or did he?
A I believe I did. My -- my interest at that time was to sit down with the board and Dr. McGruder and just speak with them.
Q All right. What, if anything, did Mr. Haverner say to you in the conversation you had?
A Basically -- and again, I don't recall the conversation, you know, I recall certain aspects and parts of it, but basically it was that they felt that because our club was religious in nature, that it was against the school board policy for us to use the facilities.

Q All right. What response, if any, did you [66] make to Mr. Haverner when you -- when he said to you that he would not let you use the facility because it was religious in nature?
A Well, I told him that we would -- that we were going to push the issue, basically, that we were going to go forward and if it took legal action -- I'm sorry. If it took legal action, that we would, you know, pursue that avenue, that we felt that this was within our rights to meet at the school.
Q Did you at any time disagree with Mr. Haverner's description of the club as religious in nature?
A No.
Q How about when you spoke with Dr. McGruder, did you take issue with his claim that the club was religious in nature?
A I took issue of the fact that he was saying it was worship.
Q What did you say in that regard?
A It's not worship.
Q I guess that sums it up. Did you give any explanation as to the club activities or -- [67]
A I don't recall the exact words, but I just -- didn't, you know -- being a pastor, I understand or I have an understanding of what I believe worship to be, a worship service, as it was referred to. And what we do at Good News Club is, again, teaching moral values from a Christian perspective.

It's not in my view in any remote sense religious worship.

Q Did you explain that to Dr. McGruder when you spoke with him?

A I don't recall. I don't know -- I doubt I used those exact words. Our conversations were not lengthy for the most part, and they really didn't get into the why's, it was basically it's against school policy, it's religious in nature, you're not using the building.

Q All right. Do you disagree with the idea that the Good News Club is a club that is of a religious nature?

MR. MARCELLE: Never mind, go ahead.

A See, it depends on how you define religion. [68] And people define it in different ways and in different contexts, and also even I will define it differently, depending on who I'm speaking to.

Q Well, insofar as what you know of the club using your definitions, is it your conclusion that this is a club that is -- that engages in activities of a religious nature?

A I would say yes, in a religious nature that religion is, you know, just an acceptance of a set of standards, of a set of beliefs.

Q Of course. And when you indicated that it was teaching moral values from a Christian perspective, are those moral values in your judgment meaningful if the person being taught those values does not accept the

tenants of Christian belief?

A What makes them meaningful, in my opinion, is a Christian perspective, is the fact that you need a relationship with Christ to fulfill them the way God would have you fulfill them.

Q Does the club, insofar as you instruct it, is the club instructed in what you just [69] described, and that is that the moral values are only meaningful with the relationship of Christ?

A I don't think I said that they're only meaningful, I said they were only meaningful to God. They're only meaningful in that they're his standards.

Q Okay. Do you teach that as part of what you teach in the Good News Club meetings?

A That's the Christian perspective, yes.

Q Exactly. In any of your conversations with -- or excuse me, your conversation with Mr. Haverner, did you have a discussion about the religious perspective of the club?

A Not to any great length. He was basically -- that conversation basically ended with him saying, you need to talk to Dr. McGruder, and basically that he was the one who I was to deal with.

Q Now, the conversation that you've just described, was that the conversation where he mentioned possibly using the Presbyterian church, or was there an

additional [70] conversation?

A That was later on. I guess there was an additional conversation because I don't believe it was at that point that he had mentioned that.

Q All right. So sometime later you had a subsequent conversation with Mr. Haverner?

A I'm not sure if it was -- it was myself who had the conversation or my wife, I'm not sure. I know it was offered to us at some point in time.

Q All right. The best of your recollection then is that you had had one and possibly a second conversation with Mr. Haverner?

A Yes, sir.

Q But no more than that; is that correct?

A I don't believe so.

Q Okay. Did you have any conversations with any other board members about your application to use the building?

A I don't recall. I do not believe so.

Q Okay. Did you have any conversations with any other school administrators, like the [71] principal or --

A The administrators?

Q Yes, sir.

A No, I don't believe so.

Q Okay. Did you have any conversations with any school teachers at the Milford Central School District about the use of the building for the purpose of the Good News Club?

A In general terms? Yes.

Q Yes.

A Yes, yes.

Q When you say in general terms, were any of those conversations about your request to use the building and the reasons that they have been denied?

A Yes, and what we were going through.

Q All right. With whom did you speak?

A Bill Hasley.

Q Anyone else?

A

it and, you know, just general -- general things like that. It wasn't a debate or discussion as to, you know, what constitutes Good News Club, what doesn't, any of that. It was just a general --

Q Did Mr. Hasley say anything about the school's decision not to allow you to use the facility?

A Yes, I believe he did.

Q Okay. Do you recall what, if anything, he said to you?

A I believe he said he didn't understand why that they would deny us.

Q Did he say anything else about it?
A No.
discussion between friends, not between a teacher and an individual.
Q Okay. Did there come a point in time in which you appeared before the Board of Education to take your case to them?
A No, sir. [73]
Q Did there come a point in time in which you spoke with any other representative of the school district regarding your building use request?
A It wasn't until I spoke to Mr. Livshin this past September, I guess.
Q What were the nature of your conversations with Mr. Livshin?
A We had just gone in to ask what room we would be using and just basically to make sure everything was straightened out and, you know, there were no misunderstandings going on.
Q Okay. And what, if anything, did Mr. Livshin say to you?
A He was very cordial, he brought us down to -- he showed us the room, asked us if that would be acceptable and if it had enough room and chairs and so forth and -- and that was -- that was about it.
Q Okay. Did there come a point in time in which the discussion occurred regarding the liability insurance issue?

A Yes. I'm sorry. Yes. [74]
Q And it was in that conversation that he raised that?
A It was in that conversation that he asked if we had a certificate of insurance, and we told him that we would look into that and we would get him one.
Q Okay. Any other conversations with Mr. Livshin about this matter, and that is the use of the school building by the Good News Club?
A Not to my knowledge.
Q Okay.
MR. MILLER: Can you have that one marked?
(Defendant's Exhibit D marked for identification.)
Q Would you please take a moment and examine Exhibit D?
A
Q Have you had a chance to review that?
A Yes, sir.
Q I'm showing you what has been marked as Exhibit D. Do you recognize this document?
A Yes, sir. [75]
Q Okay. What is it?
A It was a letter that was written to Dr. McGruder on March 14th that basically was given to avoid any misunderstanding that they might have as to what the Good News Club was.

Q Now, was this issued after the court injunction was issued, as best you can recall?
A No, sir, I do not believe so.
Q What was the purpose then in writing or sending this letter, as far as you know?
A I believe this letter came at the request of a lawyer to make sure that they understood what we were doing.
Q All right. And have you -- in reviewing this document, is there anything in it that you would disagree with about the purpose or what the Good News Club does?
A I do not disagree, no.
Q Okay. Is that an accurate description of the activities of the club?
A The activities, yes.
(Defendant's Exhibit E marked for identification.) [76]
Q Have you had a chances to review Exhibit E?
A Yes, sir.
Q And I refer your attention now to Exhibit E. Can you identify that document for me?
A It was the use of facility request form that was filled out at the beginning of this school year, September, excuse me.
Q And it indicates that the name of the organization is the Good News Club.
A Yes, sir.
Q And unlike the prior use request form, it does not refer in any way to the Children

Evangelism Fellowship organization. Is there a reason, to your knowledge, for that change?
A No, sir. It was just a -- she just -- that's just the way she wrote it out. There was no --
Q You're still connected to the Children Evangelism Fellowship organization?
A Yes, sir. We're still under their material, their training, I guess their way of doing things.
Q And it was listed that the purpose of the [77] event was to teach Bible stories, play review games, sing songs and memorize Scriptures. Is that also an accurate description?
A For the most part, yes, sir, general.
Q Okay.
(Defendant's Exhibit F marked for identification.)
Q Have you had a moment -- please take a moment and review Exhibit F, if you would please.
A (Witness complies with request.) Would you like me to read all this?
Q It's not necessary that you read it all, I'd just like you to review it so that you're at least somewhat familiar with what's there.
A Okay.
Q Have you had an opportunity to do so?
A Sure.
Q All right. Now, referring to Exhibit F, can you identify what this is?

A No. I know it comes from CEF material, but this is the first time -- or I shouldn't say this

read through it. [78]

Q

copy of the materials that your attorney supplied to us from the Child Evangelism Fellowship organization that you use as teaching materials.

A Right --

Q Do you need a copy of that?

A I am familiar with that. I've not read everything that is contained within that manual.

Q I understand. According to my copy, this would be the first page inside that booklet of materials.

A Okay, yes.

Q Do you identify this as coming from that booklet of materials?

A Yes, sir.

Q All right. And is this part of the reading materials that the teacher uses to instruct the Good News Club?

A I guess it is. I've not read it, but apparently that's what it's for, yes.

Q Okay. Was this book which your attorney had [79] included in materials sent to us, was this book in -- was this book used by you to instruct the Good News Club?

A Yes, it is.

Q Okay. And have you gone through this portion that's before you as Exhibit F concerning the initial phase that's called, let's get started?

A Prior to today?

Q Yes, sir.

A No, sir.

Q Have you ever used the book to instruct the students in the class?

A I used the material that's contained in the book, yes, sir.

Q But you're not familiar with this particular page is that what you're saying?

A That's exactly what I'm saying.

Q All right. I would, however, like to ask you some questions about Exhibit F, and it indicates that in the margin -- near the left-hand side, the column that's boxed off there, indicates that in the margin of each [80] lesson, you will find the following symbols. Are you familiar with those symbols from having used the teaching materials?

A I've not really noticed them.

Q

it appear to you that those symbols have appeared in the teaching materials throughout this booklet?

A I would have to look at the book itself. I just -- I don't --

Q Would you like to take a moment to do that?

A If you would like me to

Q I can give you my copy --
MR. MARCELLE: I'll give him mine.
A You just want me to take note if those symbols are there?
Q That's correct.
A Yes, those symbols are presented throughout the teaching manual in the book.
Q Now, is there a teaching -- or is there a symbol in the teaching manual that's listed in the left-hand column there about an invitation for a child to receive Christ? [81]
A Yes, there is, in the book.
Q Is there also a symbol there for God's concern and his love for the child?
A Yes.
Q All right. Is there also -- is there also a symbol there for the saved child application?
A Yes, there is.
Q And is there also a symbol there for God's solution or way?
A Yes, sir.
Q And how about the child's problem of sin?
A Yes, sir.
(Defendant's Exhibit G marked for identification.)
Q Would you please take a moment and examine Exhibit G briefly.
A (Witness complies with request.) Okay.
Q Now, are you familiar with Exhibit G?
A No, sir.
Q All right. Well, can you identify Exhibit G as

coming from the teaching materials that we've identified earlier as --
A Yes. [82]
Q -- materials of the Child Evangelism Fellowship organization?
A Yes, it comes from them.
Q Okay. And would that be the third page or third chapter of the teaching materials that are in there?
A It would be the third page apparently.
Q Okay. And does this appear to have been a lesson that was suggested by the materials on how to lead a child to Christ?
A It says, how to lead a child to Christ.
Q Is that a lesson that you taught in the Good News Club or materials that you used in presenting at the Good News Club?
A No, sir.
Q All right. Have you ever used the material that's contained on page 3 for purposes of conducting a session or a class of the Good News Club?
A No, sir.
Q Why is it that you haven't used this particular item?
A
Q Okay. Which are the parts of the materials that are part of the curriculum?
A Curriculum I believe begins on page 5, lesson 1.
Q What was lesson 1 about in the materials?

And if you need a copy, I'll be glad --
MR. MARCELLE: Use my copy. When we just say materials, just so it's clear, we're talking about David, a man after God's heart, which I think is Exhibit T to the discovery. Just so -- I think there's a bunch of material that he had, a lot of charts and stuff that they've sent him. And we're talking about the instruction booklet which is entitled, David, a man after God's heart.
MR. MILLER: Okay.

Q Examining lesson 1, are you able to tell me what that lesson is about?

A It is about Israel demanding a king.

Q And is there a -- it's correct, is it not, that at page 5 of the materials there's a schedule or a lesson -- and also a lesson overview. Did you follow that lesson [84] overview?

A I personally did not teach this lesson, but -- we do follow the outlines.

Q Who taught lesson number l?

A I would believe that would have been my wife.

Q All right. Do you know if she followed the lesson overview?

A Probably safe to say she did.

Q Okay. Which lessons did you personally teach?

A I taught one on David and Goliath. I taught lesson 5, lesson 6, lesson 5 begins on page 33. That's the one that I would be familiar with.

Q That's the lesson that you --
MR. MARCELLE: Can I just have one minute to --
MR. MILLER: Sure, sure.
(Pause in the proceedings.)

A If I can make this clear in that during the beginning of the year, Darleen and I both did the teaching aspect, and then my wife felt it was too much on her because she had other commitments and other responsibilities, so I [85] took over teaching exclusively.

Q Okay. So going back to lesson 1 then, were you present when lesson --

A Yes, I was.

Q -- when lesson 1 was taught. All right. Just let's see if I can get some things clear in my mind about what occurred with regard to lesson 1. Is it your recoilection that the lesson overview was followed for the lesson on Israel demands a king?

A Yes, I would assume so, sure.

Q Now, in the outline, there's a portion that relates to a conclusion. Would you please take a moment and review that?

A (Witness complies with request.) Yes, sir.

Q Now, what does it refer to when it says challenge, parens, saved child and invitation, parens, unsaved child. What do you understand those phrases to mean?

A We would challenge the children. We would

basically say, if you know Jesus as your Savior, you need to place God first in your life. And if you don't know Jesus as Savior [86] and if you would like to, then we will -- we will pray with you separately, individually.

Q All right. At what point in the lesson is that or was that conclusion discussed or presented?

A At the conclusion of the lesson, at the end of the story.

Q Okay. And are you able to tell from the schedule of materials what particular verses or passages from the Bible were discussed?

A No. As far as songs, the memory verse, of course, would be the same, but the songs would be different, if that answers your question.

Q Yes, but it indicates in the schedule, for example, that there's a reading from Ephesians. Is that the reading that was done for the memory verse?

A That would be the memory verse itself, yes.

Q Okay. And the songs, it refers to a Good News Club theme song.

A Yes, sir.

Q Is there a place in these materials where the Good News Club theme song is described or [87] written out?

A I believe we gave that to you.

Q It's in the booklet, isn't it in the teaching

materials?

A I don't believe it's in the teaching materials themselves. The teaching materials come as a packet of materials. We could sing it for you.

Q Well, if you can't find it --

A I could describe it for you.

Q Why don't we do that. Can you just describe it?

A It's basically a poster size -- it's probably maybe 30 inches by 30 inches and it's like a book, big book. And it just has the words to the song. And I don't know as we sing it real well, but --

Q Can you just describe the words that are in the song?

A Good news, that's what we're singing about, good news. I'm just drawing a blank here.

MR. MARCELLE: Maybe we can just go off the record for a second. [88]

MR. MILLER: Sure.

(Discussion off the record.)

Q Are there any religious references in the theme song of the Good News Club?

A What do you mean by religious references?

Q Are there any references to God?

A Yes.

Q Or Jesus Christ?

A Yes.

Q Are there references to just God or Jesus Christ or both?

A I know there's references to Jesus Christ. I'm not sure if it's God. It's possible.

Q All right. Were you also present during the teaching of the -- of the second lesson entitled, Saul's disobedience?

A I believe I was.

Q All right. And again, did that -- did that lesson have a conclusion, which I think you'll find on page 13 of the materials?

A Yes, sir.

Q And again, could you explain the difference between the challenge for the saved children [89] and the invitation for the unsaved children?

A Challenge for the saved child, it would be presented as to ask God for strength to obey him completely. And then we would give an invitation that if you would like that strength to obey God and you would like to ask Jesus as your personal Lord and Savior, come up and talk with us or Darleen and we'll pray with you.

Q All right. Now, up in the -- on page 13 of the materials, there's a section entitled, lesson overview.

A Yes, sir.

Q And it has a highlighted portion there called, emphasis for the unsaved. What does that refer to?

A I believe that emphasis is always the same, and that's for them to believe on the Lord

Jesus as their Savior.

Q Now, I'd like to refer your attention to page 18 of the materials. On page 18 of the materials, there's a section entitled challenge and a section entitled invitation; [90] isn't that correct?

A Yes, sir.

Q Now, in regard to that -- those two sections, challenge and invitation, does that relate to the summary that we looked at on the first page of the lesson?

A I believe it would, sir.

Q Okay. Is that the same challenge and the same invitation that you described earlier?

A The challenge would be for the kids who know God to -- in order to apply the moral values, they -- to use the strength of God. And also the invitation would be if these children, if they don't know the Lord as their Savior, in order to overcome jealousy or to obey God or whatever value we're speaking of, they would need to have ask Jesus into their lives.

Q Now, over to the left-hand column there's a symbol of a heart.

A Yes, sir.

Q And there's also some written material there concerning -- concerning the invitation. Is that the same type of invitation to come to [91] know Christ as it was referred to in the invitation you discussed earlier?

A I have not read that section. I don't believe I ever read anything within the -- within the margins of this material.

Q All right. Well, if you would please take a moment in the little section there that is noted by the heart shape, would you please read that?

A Would you like me to read that aloud?

Q No, no, just please read that to yourself. I want to ask you questions about that, if I may.

A (Witness complies with request.) Okay.

Q Now, would it be fair to say that the note there in the margin is inviting the instructor to invite children to come to know Jesus Christ as their Savior?

A That's what it's saying.

Q All right. And then the next paragraph down it says, if your teaching situation won't allow for individual counseling, you may instead address the group. Do you understand [92] that to mean that the instructions here and in the club manual suggested that perhaps you should announce to the group as a whole the material that's listed here? Is that what you understand that to be?

A Listed where?

Q Well, the material in the left-hand column here talks about either doing individual counseling or announcing to the group as a whole.

A Yes, sir. We always do individual counseling.

Q Okay. How is it that you know who the saved children are versus the unsaved children?

A I have no way of knowing that.

Q All right. How is it then that you say to the children, those of you -- how do you carry out the challenge and the invitation? Is that done by an instruction to the class?

A Yes.

Q As a whole?

A As a whole.

Q Can you give me an illustration of how you handled the instruction in the second lesson [93] concerning the challenge and the invitation?

A We would, again, say -- and I would have to refer to what this -- what the emphasis is on in this particular --

MR. MARCELLE: Page 5.

MR. MILLER: I think we'll go back to page 13.

MR. MARCELLE: I'm sorry. You're right, page 13.

A We would put that challenge and that invitation within the context of obeying God and his word. And the challenge would be, those of you who know Jesus as Savior, you can rely on God's strength to obey him. And those of you who do not know the Lord Jesus as Savior, do not have him in your

heart and would like to receive him as Savior so you can obey God the way he wants you to, and if you would like, we have them either raise their hand or just go and see Darleen.

Q Okay. Are there occasions in which some of the children will raise their hand and then request private assistance during the -- [94]

A Whenever they raise their hands, they're dealt with privately.

Q Okay. And the invitation or the challenge, however, is offered to the class as a whole, is it not?

A Yes.

Q Okay. Now, beginning on page 20 of the materials that you have in front of you, there's a chapter there concerning God choosing David to be king, correct?

A Yes, sir.

Q Were you present either participating in the presentation of the lesson or present while it was being presented?

A To my knowledge, yes, I was.

Q Okay. Were you presenting or were you just present in the room?

A I believe I would have been present at this.

Q What was this lesson about?

A This was a lesson about God choosing David to be king over Saul.

Q And again referring to the materials on page 20, the conclusion section, what was the

[95] challenge and the invitation there?

A The challenge, again, we would present it to the children that if you know Jesus as your Savior, God will use you, if your heart is right with him, if you desire to do what he wants you to do, and we would from there say, if you do not know the Lord Jesus as your Savior and you would like to so that you too may obey God and have your heart right with God, raise your hand and we will speak with you privately or pray with you privately.

Q Okay. What was the -- do you recall or can you tell from examining this document at page 20, can you recall what the specific memory verse was for that class?

A According to the material, it would have been I Samuel 16:7.

Q And was there a particular theme to this lesson or particular moral to this lesson?

A That God will use you if your heart is right with him.

Q Okay. I'd like to next refer your attention to page 26 in the materials. That is, as I [96] understand it, lesson 4. I believe the title of that is, God gives David a victory. Is that accurate, is that what lesson 4 is?

A Yes, sir.

Q Now, were you present for this presentation or this lesson?

A I believe I taught this.

Q All right.

A And may I just clarify that in that I didn't go by the lesson plan here because I was familiar with the story to an extent that I've taught it on many occasions to children that I did it kind of on my own.

Q All right. Did you follow the general format that was described -- that is described here on page 26?

A As far as memory verse and main teaching emphasis?

Q Yes, sir.

A Yes, sir.

Q Okay. Did you also go through the conclusion portion near the end of the -- end of the lesson? [97]

A I don't recall, but may very well have.

Q Okay. Was that a regular part of the way that you handled the lesson or the instruction in the class?

A As far as the --

Q The conclusion.

A The invitation and challenge?

Q Invitation and challenge.

A Yes, sir.

Q So there would have been an invitation and a challenge near the end of this lesson as well, correct?

A Yes, I would say so.

Q And I take it then, and I don't want to be terribly repetitive, but would the challenge and invitation be similar to what's listed on

page 26?

A We would have challenged the children if they know Jesus to count on God to give them courage and not to be afraid, and the children, again, that if they would like to receive Jesus Christ as their Savior, they might have the courage that God desires them [98] to have, yes, sir.

Q Okay. I'd like to next refer your attention to lesson 5.

A Page 33.

Q And lesson 5 is at page 33?

A Yes, sir.

Q And is that lesson entitled, jealous Saul tries to kill David?

A Yes, it is.

Q And did you teach this lesson?

A Yes, I did.

Q And what was the main theme of this lesson?

A Jealousy.

Q And can you explain to me how you used the story here to teach a lesson about jealousy?

A The story is a story of Saul, and Saul was king of Israel. And he became jealous of David because David became more popular, and he sought to kill David because of his jealous rage.

Q All right. Was there a challenge and invitation at the end of this lesson?

A Yes, there was. [99]

Q Can you describe for me what the challenge

and invitation were in this lesson?

A Challenge was that we can ask God and go to him to help us with our jealousy, and again, if you don't know Jesus as your Savior and you would like him to come into your life and help you deal with jealousy, then raise your hand if you would like to do that.

Q Okay. Is there also in the materials here at page 38 a section entitled gospel and invitation, near the bottom of page 38?

A Yes, there is.

Q Was that something that you followed as part of the presentation of this lesson?

A No, sir.

Q What is the difference between gospel and invitation, and invitation only that we saw in some of the earlier lessons?

A I know of no distinction.

Q Okay. Did you also teach lesson 6 entitled, David spares Saul's life?

A Yes, I did.

Q And what was the theme of lesson 6? [100]

A That we need to treat others well even though they may have mistreated us.

Q And what was the conclusion of this lesson?

A It would be, again, that God can give you the strength to not mistreat those who have done -- done evil to you, he can help you to do good to those who are bad to you, and again, if you would like to receive the Lord Jesus as your Savior in order for you to

accomplish that, you could raise your hand and Mrs. Fournier will speak with you privately.

Q Okay. Now, at page 47 of the materials, there's a song there known as, I have a friend. Was that song sung as part of the Good News meeting?

A No, sir. It's in Spanish.

Q How about at page -- I guess it would be 48.

A I don't have 48.

MR. MARCELLE: I got this at the puzzle page.

MR. MILLER: Yes, at the puzzle page.

Q Is that part of the teaching manual, the [101] puzzle page?

A I believe that comes within the packet of materials that we get along with the teaching manual, whether that itself is part of it, I am not -- I'm not sure.

(A short recess was taken.)

(Defendant's Exhibit H marked for identification.)

Q Showing you what's been marked Exhibit H and ask you whether you recognize this document?

A Yes, I do.

Q What is it?

A These are memory verse tokens.

Q And what is a memory verse token?

A We make copies of these and separate them individually and then pass them out.

Q Okay. Are these used as part of the instruction that you offer in the Good News Club?

A These are given at the end of club for them to take home for them to memorize the passages.

Q Did you actually use these during the meetings of the Good News Club that you participated? [102]

A We did not use these specific ones. These are from the King James version. We used ones from the NIV. They're the same verses, but only a different translation of the Bible.

Q So you use ones very similar to these?

A They would be --

MR. MARCELLE: When you say -- I just -- you mean these are the ones, they actually distribute them to the --

MR. MILLER: In the fashion he described it, I believe he said you distributed them to the students in the class?

THE WITNESS: That's right.

MR. MILLER: That's how I'm saying it.

(Defendant's Exhibit I marked for identification.)

Q Referring your attention to Exhibit I and ask you whether you recognize this?

A Yes.

Q And what is it?

A This was a sheet that I typed up at the [103] request of Tom Marcelle, our lawyer, to share

what the lyrics of the songs that have been sung at the Good News Club were.

Q Okay. And is this the song that you've been singing at each of the meetings at the Good News Club at which you've been present?

A No, sir, this contains more than one song.

Q Okay. Can you point out to me which is the theme song for the Good News Club?

A Theme song is not on here.

Q Oh, it's not.

A I'm sorry.

Q Which are these songs then? Perhaps you can explain the Exhibit I to me.

A These are songs that at some point in time have been sung at the Good News Club. Each paragraph represents an individual song.

MR. MARCELLE: All right.

(Defendant's Exhibit J marked for identification.)

Q Directing your attention to Exhibit J and ask you if you can identify that for me?

A It's what is called the quiet time calendar. [104]

Q And what is the quiet time calendar?

A We, at certain times, not at every club, ask the children if they would like a quiet time calendar, and what they do is they would look up the verse, one verse every day and read that verse, and they would mark it off, and when they turn this back in, we would

give them some sort of prize.

(Defendant's Exhibit K marked for identification.)

Q Showing you what has been marked as Exhibit K and ask you if you can identify that for me?

A It's the verse Acts 1:8.

Q And how was this document used in your meeting?

A I'm not exactly sure how this specific one was used, but we do use this type of format to teach them the memory verse. We would hold this up and we would all recite this verse together.

MR. MARCELLE: I see. Off the record one second.

MR. MILLER: Sure. [105]

(Defendant's Exhibit L marked for identification.)

Q Referring your attention to Exhibit L, can you identify this for me?

A I believe this is lyrics to a song from the material.

Q Okay. It was a song that was sung in the class?

A This particular song, no, it was not.

Q Okay. How about this diagram, was this diagram used --

A This particular one was not displayed.

MR. MARCELLE: Okay.

(Defendant's Exhibit M marked for

identification.)

Q Referring your attention to Exhibit M, can you identify this document for me?

A No, sir, I don't know what this is.

Q Okay. Did you use materials, M, beginning with "Tell Others The Story," like Exhibit -- you indicated you used exhibits like Exhibit K in the presentation?

A Yes, sir, Scripture verses. [106]

Q Okay. Do you recall which Scripture verses you used, would they correspond with the instructional materials?

A Yes, they would.

Q Okay. So did you do that as a regular part of the presentations that you made in the class?

A The Scripture verses that Exhibit K is an example of would be a memory verse that would be displayed.

Q Okay.

A Each week.

Q And did you have one of those kinds of displays like Exhibit K in each of the lessons?

A Yes, we would, with the exception -- with every one, yes.

(Defendant's Exhibit N marked for identification.)

Q Referring your attention now to Exhibit N, can you identify that for me, please?

A This is Daily Bread. It's a devotional booklet.

Q What does the phrase daily bread mean? [107]
A It's the title of the book.
Q Well, does it have any religious significance?
A Other than when I hear the term for me personally, it would be just a -- some sort of devotional material that would be used on a daily basis.
Q The phrase daily bread appears in the Lord's Prayer, doesn't it?
A Yes, it does.
Q And is that the -- from what you understand of Exhibit N, is that the same reference to daily bread as appears in the Lord's Prayer?
A As I understand it?
Q Yes, as you understand it.
A No, sir.
Q Do you have any understanding as to what the phrase daily bread means in reference to Exhibit N?
A I believe I already answered that, and that to me refers to some sort of devotional material that's used on a daily basis.
Q Would it be fair to say that bread is then equated with some sort of spiritual [108] nourishment?
A In this context?
Q Yes, sir.
A I would say so.
Q All right. Now, the word maranaja, do you know the significance or the meaning of that

phrase?
A I believe maranaja means -- it refers to the coming again of the Lord Jesus. I'm guessing. I believe that's what it means. I'm not sure.
Q Referring inside the document to -- inside Exhibit N to what I guess would be possibly page 2 under, what's the password, do you find that?
A Yes, sir.
Q I believe at the end of the second full paragraph there 's a definition for maranaja. Is that consistent with your understanding of the definition of the term maranaja?
A Yes, sir.
Q Okay. Could I refer your attention please to page 3 of the Daily Bread under, solving a [109] mystery, do you find that?
A Yes, sir.
Q Under the second full paragraph, there's a sentence that begins, the Bible tells us how we can have our sins forgiven by receiving the Lord Jesus Christ.
A Yes, sir.
Q Now, do you -- with respect to Exhibit N, do you teach from Exhibit N, a chapter, for 10 example, on solving a mystery?
A No, sir.
Q Okay. What then is the purpose of the -- or how was the Daily Bread booklet, Exhibit N, used in your classes?

A It is not used in the classes, per se.
Q All right. How is it -- what do you do with it then?
A These normally are given out to the children who have completed the quiet time calendars. It would be Exhibit J. Those who complete that would receive one of these. That's how they're normally used.
Q All right. Is there any teaching from Exhibit [110] N that occurs or reading from Exhibit N that occurs in the class?
A No, we don't read from these.
Q All right. And what is your purpose in distributing copies of the Daily Bread to the students who complete the calendar?
A I guess that they would continue in a daily habit of reading the Bible.
Q Okay. So it is your understanding that contained in this Daily Bread are excerpted portions of the Bible, both New and Old Testament?
A I am assuming that is both new and old. I could not tell you for certain, I've not read through one of these.
Q Okay. Are you certain then at least that it's predominantly New Testament that's in there?
A I would -- just from scanning over what I see here, I would say that would be a correct statement.
Q Okay. And would it also be fair to say that

there are multiple references in the Daily Bread to accepting Jesus Christ as your [111] Savior?
A I would just -- yes, I would assume that to be true.
Q How many students in the current year's class have you distributed copies of the Daily Bread to?
A I cannot recall one. I do not know if that's true, but I do not recall any.
Q Okay. Do you recall giving out any last year?
A Within with the Good News Club? I don't personally recall.
Q Okay.
A I'm not saying it didn't happen, I just don't recall.
Q All right. Now, in the -- in your complaint and also in the paper that you filed in connection with the application for the injunction in this case, you have compared your organization to the Boy Scouts. Would that be a fair or accurate statement?
A Yes, sir.
Q Okay. Do you know of in what way your organization, the Good News Club, is similar [112] to the Boy Scouts?
A Both clubs seek to teach children or youngsters moral values.
Q Okay. What do you base your statement on in regard to the Boy Scouts?
A I'm not sure I understand your question.

Q All right. Do you have any training as a Scout leader?
A No, sir.
Q Were you ever yourself a Boy Scout?
A Yes, sir.
Q Okay. For how long were you a Boy Scout?
A That's a long time ago.
Q Sure.
A A couple years.
Q All right.
A Maybe.
Q Now, does your organization, the Good News Club, have activities similar to the merit badge activity where students perform various activities and receive an award?
A Outside the club?
Q or inside the club. [113]
A I'm not exactly sure. I guess I'm not following you, I guess.
Q All right. Well, in what way does the Boy Scouts teach moral values?
A Well, through the badge system incentives.
Q Anything else?
A What I recall?
Q Do you have any familiarity with whether the Boy Scouts teach Bible verses in any of their meetings?
A I have no -- I could not say.
Q I couldn't hear you.
A I could not say. I'm sorry.
Q Do you know whether the Boy Scouts offer

instruction in matters related to the New or the Old Testament?
A Yes, they do.
Q Okay. In what way does the Boy Scouts do that?
A They have a badge called God and Country which entails them to be active within the church.
Q But is the instruction for the completion of that badge done in the Boy Scout meetings, or [114] is it done outside those meetings while the person attends church or religious activities?
A I'm not sure if it -- a portion of it would be in the meetings or not or -- I know a portion of it is from the outside, within the church.
Q Do you have any firsthand knowledge that the Boy Scouts conduct lessons of a religious nature with the members of the entire troop?
A Firsthand knowledge?
Q Yes, sir.
A No.
Q How about with respect to the Girl Scouts. You have compared yourself and your organization, the Good News Club, to the Girl Scouts. Is that a correct statement?
A Yes, sir.
Q Okay. In what way is your organization similar to the Girl Scouts?
A Again, we both seek to teach morals to

youth.

Q All right. In what way does the Girl Scouts teach morals to youth?

A Again, with the badges and incentives and that type of thing. [115]

Q Okay. Do you have any firsthand knowledge that suggest that the Girl Scouts conducts lessons in Bible or Scripture?

A I have no firsthand knowledge.

Q Okay. Are you aware of what specific instruction the Girl Scouts give in religious subjects?

A No, sir.

Q Now, you have also compared yourselves to the Little League. In what way is your organization similar to the Little League?

A A part of it is teaching kids morals.

Q Are you familiar with the way in which the Little League teaches kids morals?

A Yes, sir.

Q And how is that done?

A I coached.

Q Okay. And how did you teach morals as part of the Little League?

A You teach fair play. You teach -- emphasis is not just on winning. It's, you know, playing fairly, it's, you know, that type of thing.

Q When you were a coach in the Little League, [116] did you conduct instruction in the Bible or Scripture?

A No, sir.

Q When you were a coach in the Little League, did you hold sessions in which you held formal instruction on moral values or moral teaching?

A I'm not sure I understand what you mean by – formally. How do you -- I mean --

Q In the Good News Club you give a lesson, do you not?

A Right, right.

Q Did you do anything like that with the Little League in regard to morals or moral values?

A Sitting down and explaining to them what honesty was or --

Q Correct.

A No.

Q Is there any other way in which you compare yourself to the Little League, your organization to the Little League?

A Other than we're seeking to teach moral values to children, no.

Q Okay. Are there any other groups that you [117] compare yourselves to who also use the school facility?

A Yes, sir.

Q Who other groups do you compare to?

A 4-H.

Q And in what way are you -- is your organization similar to the 4-H Club?

A Teaching moral values to young children.

Q How does the 4-H Club do that?

A They do it through different projects, for

example, my daughter raised chickens through the 4-H. It's to teach responsibility, that type of thing.

Q Okay. In the 4-H Club, is there any formal instruction in morals or in responsibility?

A I have no firsthand knowledge of that.

Q Okay. Does the 4-H Club teach Scripture or Bible verses as part of its acuvity?

A I have no firsthand knowledge of that.

Q Does your organization compare itself to any other organizations that use the school facility as regulated?

A Not that I recall. [118]

Q Okay.

MR. MILLER: Just give me a moment to check over my notes. I think I'm almost done.

Q Let me ask you, did there come a time that you showed some movies in some of your classes of the Good News Club?

A Yes, sir.

Q All right. Do you recall what any of those movies were?

A They were -- a couple of the general movies, title is Veggie Tales.

Q What are those movies about?

A They're computer-generated characters. They're vegetables, and there's Bob, the tomato, Larry, the cucumber, and the movies basically teach some sort of moral value. For instance, there's one -- I don't know if we

showed this one, but they're all basically like this, Larry and the Giant Fib. And it's a story about lying and how lying can just get out of hand. And they basically, again, just teach a moral lesson. I believe we showed one [119] that dealt with the story of David and Goliath, of course it was vegetables fighting rather than people. And I can't recall the other one that we -- that we showed.

Q Was there a movie entitled, Where is God When I'm Scared?

A Yes, that is a Veggie Tale movie.

Q And was that the point of that movie, teaching children about believing in God and God taking care of them when they're scared?

A It was that we don't have to be afraid, you know, of the boogieman or anything else because God is watching over us, that he is above us.

Q Okay. In viewing these movies, did you have occasion to observe whether these movies mentioned Jesus Christ?

A They do not. There was -- there's a whole series of them, and I believe there's only one in the whole series that mentions Jesus Christ.

Q Okay. Which one is that?

A That would be one on Christmas. [120]

Q Did you show that movie at or near

Christmas time this year?
A I don't believe so, no.
Q Okay. How about in the prior year?
A We have not shown that movie.
MR. MILLER: Okay. I think for the time being I think I'm all set. Thanks very much. Thanks for your patience.
(Pause in the proceedings.)
DARLEEN FOURNIER, having been first duly sworn by the Notary Public, was examined and testified as follows:
EXAMINATION BY MR. MILLER:
Q Mrs. Fournier, my name is Frank Miller. I'm going to ask you some questions. If at any time you don't understand my questions, please let me know and I'll be happy to rephrase the question. Can we agree upon that?
A Yes.
Q All right. Would you state your full name for the record, please?
A My name is Darleen Fournier.
Q And how old are you? [121]
A I'm 36.
Q Okay. May I have your date of birth, please?
A June 29th, 1961.
Q And where were you born and raised?
A I was born in Limestone, Maine, and I was raised in Montville, Connecticut.
Q What's your educational background?
A I graduated from Montville High School in

1979, and I graduated from Westbrook College in Portland, Maine, in 1981 with an associate's in applied science.
Q Any other education beyond that?
A I took a community course on computer programming.
Q Now, in regard to the matters involving this litigation and the claim against the Milford Central School District, what was your first involvement with the Milford Central School District regarding the request to use their facilities for meetings of the Good News Club?
A My first involvement was sending in a use of school form.
Q Prior to that time, had you had any [122] discussions with any school officials concerning the use of the building?
A No.
Q Okay. The building use request form was submitted in 1996, as I understand it, and did there come a point in time prior to that that you ran meetings of the Good News Club at a local church?
A Yes.
Q Okay. For how long did you run meetings of the Good News Club in the church?
A One and a half years.
Q And am I correct in understanding that prior to September of 1996 students who wished to participate in the Good News Club were

allowed to ride the buses from the Milford Central School District to the Milford church where you and your husband would conduct the class?

A I can't answer that question because my husband didn't run the class. So that's an inaccurate statement.

Q All right. Well, in the year and a half or so that you ran the class at your church in [123] Milford, were the students bused from the Milford Central School District to the church?

A Yes.

Q Okay. Did there come a point in time in which you discussed some things with school officials concerning an alteration in the transportation schedule that would mean the district would not be able to transport your students anymore?

A Was there a discussion between myself and someone?

Q Did there come a point in time when someone from the school district told you they wouldn't be able to transport the students from the school to the church at some time prior to September 22, 1996?

A No.

Q Okay. How did you learn that the school district was not going to be transporting the students from the school to the church for purposes of the Good News Club meetings?

A That came from some of the children themselves stating that. [124]

Q Okay. Approximately when did you first learn of this?

A I believe that would have been September, October of 1996.

Q Okay. When you became aware that the school was not going to transport the students from the school to the church for the Good News Club meetings, did you talk with anyone at the school district about that?

A No.

Q Okay. Did you make any inquiries to find out why that change had occurred?

A No.

Q Did you do anything to try to get the transportation back to the way it had been before?

A No.

Q Prior to submitting your request to use the facilities did you talk with any school officials about the availability of rooms within the school district for purposes of conducting the Good News Club meetings?

A Before I sent in the form? [125]

Q Yes.

A No.

Q I'm showing you what's been marked as Exhibit A and ask you if you can identify that for me, please?

A It's the use of facilities request form.
Q And is that form completed in your handwriting?
A Yes.
Q Okay. Was it you that completed it?
A Yes.
Q Okay. Was it submitted to the school district at or about the date that appears on that, namely September 22, 1996?
A I don't see a date.
Q I think near the top, about a quarter of the way down you'll see a date.
A Yes.
Q Okay. Does that date reflect when you completed the form?
A Yes.
Q Okay. And would that date also reflect when you submitted it to the school officials? [126]
A There could be a day difference.
Q Okay. Can you describe for me the process that you went through with respect to Exhibit A? Did you secure the form first and complete it at home and then bring it in?
A I had the form at home, I completed it, I sent it in with my daughter.
Q Okay. All right. Which daughter?
A I believe that would be Brooke.
Q Okay. And what -- what happened after that?
A The day that the form was brought to school,

I got a phone call from Dr. McGruder, and he said that he would not -- the school would not be able to accommodate our request.
Q All right. Was this a communication by phone?
A Yes.
Q Okay. And did he call you at home?
A Yes.
Q All right. Can you describe for me, did he say anything other than the district wasn't able to accommodate the request?
A Yes.
Q What else did he say? [127]
A I believe he mentioned that in another district, he had a request from a priest and that he denied that priest the use of the school and because he had said no then, he was saying no now, and that because of separation of church and state, our club could not use the school.
Q All right. Did he ask you any questions about what the Good News Club was or how it operated?
A No, sir, and he was not interested.
Q Okay. When you say he was not interested, how do you know that?
A I could -- I could tell that his no was no, and that was it.
Q All right. But did you discuss with him at any time in the conversation what would occur in the meetings of the Good News

Club?

A No, and I didn't feel that I had to because it was right on the form. He knew full well what we were going to be doing in the meetings.

Q Okay. So you felt that what was on the form was an accurate and complete description of [128] the activities?

A Yes.

Q Okay. Now, did there -- how long did this conversation last between you and Dr. McGruder?

A Probably more than ten minutes.

Q Do you recall anything else that was discussed in your conversation with Dr. McGruder?

A I do remember speaking to him about wanting to get together with him and the board, whether it was at my first conversation or whether it was a subsequent conversation, I don't remember.

Q What, if any, response do you recall Dr. McGruder making?

A He didn't seem to think that that was necessary. He had said no.

Q All right. Was anything else discussed in this initial conversation between you and Dr. McGruder?

A I don't recall.

Q Okay. After you completed your phone call from Dr. McGruder, what, if anything,

occurred [129] next in relationship to your request to use the facility?

A The only thing that I've done is to fill out and send in the forms. I've answered the phone when Jim Haverner and Dr. McGruder have called.

Q All right. After you talked with Dr. McGruder, did you speak with him again at some point later about the building use request? Is that what you're --

A It may have only been that one conversation.

Q Okay. All right. And then you're indicating you had yet another subsequent conversation with Jim Haverner?

A I do recall speaking with him on the phone.

Q Okay. And approximately when did you have that conversation with Mr. Haverner?

A It was after September 22 and -- and it was in the fall.

Q All right. Was the conversation in reference to your request for building use?

A Yes.

Q Okay. What, if anything, did Mr. Haverner say [130] to you at that time?

A He implied that he had no problem with teachings that we might have, but if they allowed us to use the school, that there might be other people who would want to use the school, and that he wouldn't want their message being taught at the school.

Q Okay. When you say, you said he had no

problem with what you were teaching, what was he referring to?

A Well, the only knowledge that he could have concerning our Good News Club was what was on the request form, and it says that we were with a group of boys and girls meeting an hour a week for a fun time of singing songs, hearing a Bible lesson and memorizing Scripture. So that must be what he did not oppose.

Q He didn't say -- he didn't embellish his answer or his statement to you in any way?

A Right, correct.

Q At the time that you had this conversation with Mr. Haverner, was he a member of the [131] Board of Education?

A Yes.

Q Was he the board president?

A Yes.

Q Did he identify himself as such when he contacted you?

A I understood him to be calling on official business, yes.

Q Okay. All right. Now, did he discuss anything else with you in the conversation?

A I believe he did speak about having the children leave the school and walking a distance and using a building and paying a fee that would go to an organization that he was involved in.

Q Did he identify for you what the facility was

that he was suggesting you to use?

A Yes. I believe that would be the historical society building, and I believe that's called the Zayre House.

Q Did you make any response to what he said to you?

A Yes. I told him that would be unacceptable. [132]

Q Okay. And why was that unacceptable to you?

A Because to me, it reminded me of being in the 60s when black children were told that they could use a different black bathroom and they could sit in a different place on the bus, and that because of our message, being from a Christian perspective, that we were not welcome here.

Q Did you say that to Mr. Haverner, what you just told me?

A I told him that it would not be acceptable for the children to have to leave the school and go someplace else.

Q And did you explain to him anything else about your reaction to his proposal? Did you tell him anything else?

A I told him that I was concerned for the safety of the children because they would have to walk a distance unsupervised.

Q Anything else?

A I may have told him that it was logical for the children just to remain at school because

that made it easier for the parents. [133]

Q Did you and Mr. Haverner discuss anything else in the conversation?

A I don't recall anything else.

Q Okay. After you spoke with Mr. Haverner, what happened next in regard to your application for the use of the building?

A Like I said, I've sent in the use of facility request forms. I've spoken with Dr. McGruder concerning some mimes coming to perform at the school, and I have spoken with Peter in his office.

Q What other conversations did you have with Dr. McGruder?

A Except to answer the phone if he called and hand it over to Steve, that would be it as far as I recall.

Q Okay. What was the discussion you had with Dr. McGruder concerning mimes performing at the school?

A We wanted to bring in the -- a couple who perform as mimes and have them come and perform for the Good News Club. And Dr. McGruder was adamant that he did not want [134] those mimes at the school.

Q Did he tell you why?

A The same reason that he didn't want the Good News Club at the school, he didn't want these morals and values to be taught at the school after school from a Christian perspective.

Q Did he tell you what he found objectionable about the mimes' proposed performance?

A No.

Q Were the mimes persons who would present a -- an act with a religious theme?

A The mimes would perform a skit, the skit would portray some moral or value from a Christian perspective.

Q Did you submit a separate building use request form for the mimes?

A Yes.

Q All right. When did you submit that?

A I believe we wanted to have them at our end of the school year party, so that would have been in all probability, June.

Q June of '97?

A Yes. [135]

Q Okay. Now, when you say that the mimes were to present a moral from a Christian perspective, what -- what does that mean?

A Christian perspective is that you need the Lord Jesus to help you to be able to give you the power actually to live a moral life.

Q What was it that the mimes would do that would be of a religious nature, if anything?

A I don't know that I would call it a religious nature. There weren't any traditions -- church traditions taught, basically it was just a songs -- children's songs that were acted out through mimes.

Q Were any of those songs of a religious

nature?

A There were no church teachings, there were no church traditions, just general morals, values and Bible teachings.

Q Did the mimes' skit involve Bible teaching?

A Yes.

Q And did Dr. McGruder make Some reference to -- to the fact that the mimes would be teaching a Bible lesson as a reason for his turning down your request? [136]

A No, he just had a really sore spot concerning those mimes.

Q Okay. Did he articulate or tell you why it was that he had a sore spot?

A No.

Q What do you understand from his conversation was the reason why he, as you put it, had a sore spot about the mimes?

A He never elaborated on that.

Q How do you know that he had a sore spot about it?

A Just from things that people have said.

Q When you say things that people have said, are you referring now to people other than Dr. McGruder?

A Yes.

Q Okay. So I take it that these would have been conversations that you had sometime after you had spoken with McGruder about the mimes?

A No.

Q Well, when did you talk with these people?

A I knew that Dr. McGruder had a problem with these mimes before I sent in the form. [137]

Q How did you know that he had a problem with the mimes?

A From what other people have said.

Q Okay. Specifically who?

A Someone that worked in the school.

Q Okay. Who was it that you're referring to?

A Martha Chapman.

Q Martha Chapman?

A Um-hum.

Q What position does Martha Chapman hold?

A I believe she's the treasurer's assistant.

Q Did she tell you what it was that Dr. McGruder objected to about the mimes that you were proposing to come in and do a skit?

A No.

Q What, if anything, did Martha Chapman tell you about Dr. McGruder's attitude or opinion on the subject of the mimes?

A She said that there was -- he said that there was no way that those mimes would ever be in that school again.

Q Had the mimes performed in the school before?

A Yes. [138]

Q And do you know what it was that the mimes did when they performed at the school?

A I did not see them, but I know that they had

music and performed skits along with other performers that day.

Q What kind of music did they have?

A I didn't hear the music.

Q Okay. Do you know what kind of music they were supposed to be utilizing at the -- on the occasion when you had proposed them to come and make a presentation?

A Yes.

Q Okay. Well, what kind of music was it?

A Children's songs.

Q Were any of them of a religious nature?

A Again, they don't depict any religion. They simply are children's songs that may contain Bible verses, morals, values.

Q So Dr. McGruder, I take it then, never mentioned to you why it was that he objected to the mimes coming into the school building?

A Correct.

Q And if I understood your earlier testimony, it [139] is to the effect that you never spoke with McGruder at any time about his reasoning for denying your request for the mimes, is that also correct?

A Correct.

Q Did you have any further conversations with Dr. McGruder?

A Not that I recall.

Q Did you have any additional conversations with Mr. Haverner?

A Not that I recall.

Q Did you have any conversations with any other school officials about your request for building access?

A Is a teacher a school official?

Q It certainly could be within the parameters of my question. I'm using that very broadly, so if you had a conversation with a teacher about it, I'd like you to tell me.

A Yes.

Q Okay. Who did you speak with?

A I spoke with Mr. Hasley.

Q And he is the' teacher at the school district? [140]

A Yes.

Q Okay. And what was your conversation with Mr. Hasley?

A I just gave him the general rundown of what we've been going through and where we were at that point.

Q And what, if anything, did Mr. Hasley say to you?

A I don't recall what he said.

Q Other than Mr. Hasley, did you have any other conversations with any other school officials?

A I don't know if Martha Chapman is a school official or not. I know she works at the school.

Q You've already told me about speaking with her about the mimes. Is there anything else

you spoke with her about?
A As far as I recall, just general information.
Q Was there anything specific as to this case that you discussed with Martha Chapman?
A Basically just what was published in the newspaper.
Q Okay. Do you have a specific recollection of [141] when you spoke with Martha Chapman?
A No.
Q How many times did you speak with Martha Chapman?
A About this issue?
Q Yes, ma'am.
A I wouldn't be able to tell you.
Q All right. Did you speak with any other school officials concerning this situation of your request to use the school facility?
A No.
Q Did you say no?
A No.
Q Now, did there come a time that you conducted the classes of the Good News Club when the classes were actually held at the school facility?
A I'm sorry, did you ask if I taught the lessons?
Q Yes.
A Yes.
Q Okay. How many of the lessons did you teach?
A Four, I believe. [142]

Q Okay. Would those be four lessons out of the materials that we identified earlier as the materials from the Child Evangelism organization?
A They were all four from the Child Evangelism organization.
Q Okay. And are those the same lesson plans or lesson book that was identified earlier as the book entitled David, a man with a good heart -- or a man after God's heart? I'm sorry. Excuse me.
A Yes, there were three lessons from David that I had taught.
Q Okay. And was there another lesson from some other source that you had taught?
A Still CEF.
Q Okay. What materials are you referring to now as having taught out of that were not from the David book?
A There was a Christmas story.
Q Okay. And what materials are you referring to about the Christmas story?
A The lesson has a name, but I don't know what [143] it is.
MR. MILLER: Do we have that in these exhibits?
MR. MARCELLE: I don't think so.
MR. MILLER: Could I then request a copy of the Christmas materials lesson?
MR. MARCELLE: Absolutely.
MR. MARCELLE: Again, I think this is

mostly before Christmas. I don't recall in my review seeing the Christmas story. I'm pretty sure it is in there, Frank.

Q When did you teach the Christmas lesson, was it for Christmas of '97 or Christmas of '96?

A Christmas of '97.

Q Okay. And earlier I asked your husband some questions about the -- the general description or outline of how the club meetings were run. Can you describe for me in general how the club meetings were run, what were the events that you did?

A The children arrive and if they'd like to share a memory verse that they had learned the week before with me, they may, and if they [144] recite it, they get to write their name on the board. And then there's an opening prayer, and a song, and then we have a memory verse from the Bible that I help the children to learn. I use a game to help them to learn it. There's a Bible story to portray a moral or a value lesson, a review game. If there's time there's a missionary segment. And -

Q Missionary what?

A Segment. And then we will draw for quiet seat prize. We'll recognize that if somebody has a birthday, give them a pencil, sing happy birthday, give out candy for everyone-- everyone who comes gets a piece of candy.

Those who have said their verses get another piece of candy. And sometimes there's an additional song if we have time. And then that's it.

Q Are the lessons held on Tuesday afternoons?

A Yes.

Q And the time goes from 3 to 4?

A Yes.

Q Now, who leads the children in prayer at the [145] beginning of the meeting?

A My husband.

Q And has that been true even during the period of time when you were teaching the class?

A I believe so.

Q Now, earlier --

MR. MARCELLE: Frank, just interrupt you. Mind if I just have one minute?

MR. MILLER: Sure, take what you need.

(A short recess was taken.)

Q Now, in the lessons that you've taught, did you also at the conclusion of the lesson go through the process of the challenge and the invitation?

A Yes.

Q Okay. Can you describe for me what you understand the challenge to be and what the invitation is?

A The challenge is for the children to take the moral lesson that was taught and to apply it to their lives. And the invitation, it gives the

children an opportunity to seek God's [146] strength through a personal relationship with Jesus Christ to be able to do the same thing.

Q Okay. And for all of the lessons that you taught, the four lessons that you taught, was the challenge and invitation a part of the lesson?

A Yes.

Q Okay. Now, did you have any conversations with Mr. Livshin about the use of the building by the Good News Club?

A Yes.

Q Would you describe for me, please, each of your conversations with Mr. Livshin?

A I recall Steve and I going to the school and meeting with Peter and asking him if everything was all set for our use of the school, and he very kindly showed us the room that we would be able to use and wanted to make sure that it was all right. And he also asked whether or not we had any insurance. And at that time, we said that we thought we did. He said we needed it, a certificate.

Q Do you recall when that conversation took [147] place?

A I believe that would have been in September of '97.

Q And have you had any conversations with him since then about the use of the room by

the Good News Club?

A No, not about the use of the room.

Q Okay. Have the conversations that you've had with Mr. Livshin in any way had any relationship to the lawsuit that you filed against the Milford Central School District?

A Only in a very general sense.

Q Okay. To the extent you've had any conversations him about the lawsuit in any regard, I would like you to tell me about those conversations. I'm not interested in conversations about things unrelated to the lawsuit. So if there's any conversation that you've had about the lawsuit, even in a general manner with Mr. Livshin, I would like you to tell me about it.

A He only made a very general statement saying that this would all be done with one way or [148] another, and that he would just accommodate us because we had a court injunction.

Q Any other conversation about the --

A About the court?

Q -- about the lawsuit or any of the claims that you've raised in the lawsuit?

A No.

Q Now, in the lawsuit itself, it is alleged that you and that the members of the Good News Club have sustained some harm or some injury as a result of the action taken by the school district. Can you tell me what, if any,

harm or injury has occurred as a result of the school district denying your use of the facility?

A Well, it's caused us stress.

Q Okay. Anything else?

MR. MARCELLE: Just, Frank, so I can be clear, are you talking about legal harm or just harm in fact?

MR. MILLER: I really want harm in fact. Obviously I'm assuming you'll take care of the -- [149]

MR. MARCELLE: Right.

MR. MILLER: -- the legal matter. I want to know, you know, if she sustained –

MR. MARCELLE: -- any damages –

MR. MILLER: -- damages, out of pocket expenses, anything like that.

A Is that what you're asking?

Q Yes.

A Monetary?

Q Monetary, personal, anything like that. The term is fairly broad, but it's intended to be.

A Well, it's caused us some difficulty and stresses.

MR. MARCELLE: Also let me state just for the record, I don't think -- we're not making a claim for any damages and we have no intention of doing so, outside of our 1988 remedy if we should -- but I just wanted to put that on the record as well so you know that was our position.

MR. MILLER: All right. Very fine.

Q Now I'm showing you what has been marked as [150] Defendant's Exhibit D. Is that a copy of a letter which you had prepared and forwarded to Dr. McGruder?

A Yes.

Q What was the circumstance that led to your sending that letter to Dr. McGruder?

A It was recommended that this letter -- that a letter be written.

Q Okay, was that by your counsel?

A Yes.

MR. MILLER: Just speak to you outside for a second. I think I'm just about finished.

(Pause in the proceedings.)

MR. MILLER: Tom, we're all set.

Thank you very much.

(Whereupon the proceedings concluded at 2:15 p.m.) [151]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE GOOD NEWS CLUB, ANDREA FOURNIER & DARLEEN FOURNIER

Plaintiffs,

v.

MILFORD CENTRAL SCHOOL,

Defendants.

REPLY AFFIDAVIT

Civil Action No.:
97-CV-0302
(TJM/GLS)

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

I, Frank W. Miller, being duly sworn depose and say:

1. I am an attorney at law duly licensed to practice law in the State of New York, and a member in the law firm of Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C., attorneys for Defendant herein.

2. I am duly admitted to practice in the United States District Court for the Northern

District of New York. My bar roll number is 102203.

3. I make this Affidavit in support the Defendant's motion for summary judgment and in opposition to the Plaintiffs' cross motion filed herein.

4. My attention is directed in particular to the affidavit of Steven Fournier submitted in opposition to our motion for summary judgment and in support of his motion for summary judgment. I respectfully submit that Reverend Fournier has ignored the bulk of his testimony and the bulk of those facts which make this activity a form of religious instruction.

5. I wish to reiterate that the passages in particular cited at paragraph "31" of my previous affidavit sworn to July 2, 1998, makes it very clear that Reverend Fournier was involved in religious instruction when he conducted the Good News Club meetings. In particular, Reverend Fournier's explanation of teaching children of morals from a Christian perspective reveals his true purpose in these instructions. The Reverend testified as follows:

> Because we are teaching morals from a Christian perspective, we would present that perspective, which is that

these morals or these values are senseless without Christ. That's to the children who know Christ as a Savior, we say, you know you cannot be jealous because you know you have the strength of God. To children who do not know Christ, we would say, you need Christ as your Lord and Savior so that you might overcome these, you know, feelings of jealousy or overcome the desire to do bad things to those who somehow hurt you. (See Exhibit 9, Deposition of Reverend Steven Fournier at page 34).

6. The Reverent Fournier also testified as stated in paragraph "31" of my previous affidavit.

7. Reverend Fournier also states in his affidavit in opposition that the meetings of the Good News Club are not religious instruction. He alleges that children are not taught about church traditions and are not taught about the sacraments or other imperatives of the church. However, Reverend Fournier testified at page 23 of his deposition that each of the meetings began with an opening prayer. Other prayers are said during the course of the meeting. Reverend Fournier testified as follows:

There may have been a prayer at some

point for missionaries that are supported by CEF or -- excuse me. I should say that our CEF missionaries.

Question: Any other types of prayers said by the Club?

Answer: There may be at times prayers said to receive Jesus as their personal Savior. (See Defendant's Motion Exhibit "9", page 23)

8. Reverend Fournier also alleges that the Good News Club is not affiliated with any particular church. This completely ignores the fact that the Good News Club is a part of and closely affiliated with the Children Evangelism Fellowship Organization. Further, as Reverend Fournier testified at page 23, the Children Evangelism Fellowship Organization sponsors Christian missionaries throughout the country and throughout the world and Reverend Fournier acknowledges that the Children Evangelism Fellowship Organization is a Christian group. (See Exhibit "9," pages 23-24).

9. Reverend Fournier acknowledged that the phrase "Good News" refers to the Scripture in the New Testament that Christ died for our sins and rose on the third day. (See Deposition of Reverend Fournier. Defendant's Exhibit "9," pages 24-25).

10. Reverend Fournier testified that children are asked to memorize certain Bible verses. They sing songs of a religious nature. Religious material is distributed during the course of the meeting and games of a religious nature are played, movies with a religious theme are presented, even prizes of a religious nature are awarded to the children.

11. Although Reverend Fournier alleges in his affidavit that other children are permitted to attend these meetings, he acknowledges at page 27 of his deposition, Exhibit 9, that he is unaware of any person of either the Muslim or Jewish faith who attends these meetings. It appears from the deposition testimony of Reverend Fournier that the children who attend these meetings are all members of one Christian religious denomination or another.

12. Reverend Fournier also acknowledged that there are times during the Club meetings when asking children to accept Jesus Christ as their Savior is part of the lesson and part of the instruction. Page 32 of Reverend Fournier's testimony he testified as follows:

> Question: Are there occasions during the Club meetings when accepting Jesus Christ as their Savior is part of the lesson or part of the instruction?

> Answer: Yes
>
> Question: Can you explain to me under what circumstance that occurs?
>
> Answer: That occurs during the story at some point.
>
> (See Defendant's Motion Exhibit "9," page 32).

13. Reverend Fournier testified at page 34-35 that songs invoking the names of Jesus Christ are routinely sung as a part of the regular program in the Good News Club.

14. Reverend Fournier testified that the games which the children play are replete with religious references. (See Deposition of Reverend Fournier, Deposition Exhibit "9," pages 35-36).

15. Reverend Fournier also testified that missionary stories are told as well in which the purpose of the story is to offer an explanation of spreading the Gospel. (See Deposition of Reverend Fournier, Deposition Exhibit "9," pages 37-38).

16. Contrary to the assertions of Reverend Fournier in his most recent affidavit, the Reverend testified that the Good News Club is a religious organization. The Reverend testified as follows:

Question: Alright. Do you disagree with the idea that the Good News Club is a club that is of a religious nature?

Answer: See, it depends on how you define religion. And people define it in different ways and in different contexts, and also even I will define it differently, depending on who I'm speaking to.

Question: Well, insofar as what you know of the Club using your definitions, is it your conclusion that this is a club that engages in activities of a religious nature?

Answer: I would say yes, in a religious nature that religion is, you know, just an acceptance of a set of standards of a set of beliefs.

Question: Of course. And when you indicated that it was teaching moral values from a Christian perspective, are those moral values in your judgment meaningful if the person being taught those values does not accept the tenants of Christian belief?

Answer: What makes them

meaningful, in my opinion, is a Christian perspective, if the fact that you need a relationship with Christ to fulfill them the way God would have you fulfill them.

Questions: Does the Club, insofar as you instruct it, is the Club instructed in what you just described and that is that the moral values are only meaningful with a relationship with Christ?

Answer: I don't think I said that they're only meaningful. I said that they were only meaningful to God. They're only meaningful in that they're His standards.

Question: Okay. Do you teach that as part of what you teach in the Good News Club meetings?

Answer: That's the Christian perspective, yes.

(See Deposition of Reverend Fournier. Deposition Exhibit "9," pages 68-70).

17. Reverend Fournier testified to the very deeply religious nature of these meetings. He

testified to their religious nature at page 89-90 of his deposition.

18. Upon information and belief, it is therefore clear that the focus of the Club is to promote the Christian faith. Upon information and belief, central to every aspect of the Club's activities is a belief in God and, in particular, a belief in Jesus Christ.

19. Upon information and belief, the argument that the instruction does not accentuate instruction in any particular religious sect, i.e., Protestant, Catholic, etc., misses the point. The instruction during meetings still focuses on a belief in God and, in particular, general beliefs in the Christian faith. The fact that the beliefs of a particular Christian religion are not promoted is irrelevant.

20. We respectfully submit that the activities of the Good News Club are decidedly of a religious nature and that the Milford Central School District acted appropriately when it refused to permit the Good News Club to use the school facilities as it violated the school's policy concerning its limited forum.

/s/
Frank W. Miller

Sworn to before me this
31st day of July, 1998.

_____
Notary Public